

Supreme Court Rule 43. Interest on Lawyers' Trust Accounts.

1. Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.15, requires that Tennessee lawyers who maintain pooled trust checking accounts for the deposit of client funds participate in the IOLTA (Interest On Lawyers' Trust Accounts) program, unless they decline to participate, as described in section 4(c) below.

The following rule shall govern the operation of IOLTA accounts and the IOLTA program:

(1) Lawyers or law firms that deposit client funds in a pooled trust checking account in the IOLTA program shall direct the financial institution:

(a) To remit interest, preferably monthly but at least quarterly, calculated as described in sections 1(c) and 1(d) below to the Tennessee Bar Foundation;

(b) To transmit with each remittance to the Tennessee Bar Foundation a statement showing:

(i) the name of the lawyer or law firm on whose account the remittance is sent;

(ii) the account number;

(iii) the balance against which the interest rate is applied;

(iv) the rate of interest applied;

(v) the gross interest earned;

(vi) any charges against the interest; and

(vii) the net interest remitted.

Duplicate information shall be transmitted to the lawyer or law firm maintaining that account.

(c) That the interest rate paid shall be no less than the highest interest rate generally available from the financial institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any.

(d) That deductions by the financial institution from interest earned may include charges for reasonable fees (other than overdraft charges), which shall be computed in accordance with the financial institution's customary pricing procedures for interest-bearing accounts.

Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer. Nothing in this Rule shall be construed to require that a financial institution charge fees concerning an IOLTA account, nor does anything in this Rule prohibit a financial institution from discounting fees associated with an IOLTA account. Financial institutions participating in the IOLTA program are encouraged to discount or write off fees associated with IOLTA accounts as an institutional contribution to the community.

(e) That fees or charges in excess of the interest earned on the account for any month or quarter shall not be taken from interest earned on other IOLTA accounts.

(2) As provided in Supreme Court Rule 8, RPC 1.15(a)(1), lawyers or law firms may deposit their own funds in such an account for the sole purpose of paying bank service charges on that account, but only in an amount reasonably necessary for that purpose.

(3) Interest transmitted shall, after deductions for the necessary and reasonable administrative expenses of the Tennessee Bar Foundation for operation of the IOLTA program, be distributed by that entity, in proportions it deems appropriate, for the following purposes:

(a) To provide legal assistance to the poor;

(b) To provide student loans, grants, and/or scholarships to deserving law students;

(c) To improve the administration of justice; and

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

(4) The registration form required by Tennessee Supreme Court Rule 9, Section 20.5 shall also include an IOLTA compliance statement. Each lawyer completing that statement will advise the Board of Professional Responsibility as to his or her compliance with this Rule as follows:

(a) A lawyer who deposits client funds in a pooled trust checking account that participates in the IOLTA program shall list the name of the financial institution(s) and the account number(s);

(b) A lawyer who does not maintain a pooled trust checking account for deposit of client funds shall advise the Board of Professional Responsibility, utilizing the options printed on the statement, why he or she does not maintain such account;

(c) A lawyer who deposits client funds in a pooled trust checking account that does not participate in the IOLTA program must notify the Chief Justice of the Supreme Court of his or her declination to participate. The notice must be given to the Chief Justice annually, in the form of a letter, submitted to the Board of Professional Responsibility in conjunction with the registration statement.

(5) Copies of the IOLTA compliance portion of the registration statements and any letters of declination to participate in the IOLTA program shall be transmitted to the Tennessee Bar Foundation by the Board of Professional Responsibility.

(6) The Board of Professional Responsibility, acting in concert with the Tennessee Bar Foundation, may promulgate such forms and procedures as will implement paragraphs four and five of this Rule and of Supreme Court Rule 8, RPC 1.15, as amended herein.

Upon review of the Tennessee Bar Foundation's petition and the joint submission of the Tennessee Bar Foundation and the Tennessee Bar Association and in accordance with the amendment to Rule 43 as set out hereinabove, Supreme Court Rule 8, RPC 1.15 is amended as follows:

Rule 8, RPC 1.15 is deleted in its entirety and the following is substituted therefor:

Supreme Court Rule 8, RPC 1.15. Safekeeping Property.

(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. A lawyer in possession of clients' or third persons' property and funds incidental to representation shall hold said property and funds separate from the lawyer's own property and funds.

(1) Funds belonging to clients or third persons shall be kept in a separate account maintained in an insured depository institution 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. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying bank service charges on that account, but only in an amount reasonably necessary for that purpose.

(i) Except as provided by subparagraph (a)(1)(ii), interest earned on accounts in which the funds of clients are deposited, less any deduction for service charges (other than overdraft charges), fees of the depository institution, and intangible taxes collected with respect to the deposited funds, shall belong to the clients 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.

(ii) A lawyer shall deposit funds of clients and third persons that are nominal in amount or expected to be held for a short period of time in a pooled account that participates in the Interest On Lawyers' Trust Accounts ("IOLTA") program, which provides that all interest earned be paid to the Tennessee Bar Foundation in accordance with the requirements of Supreme Court Rule 43. The determination of whether funds are nominal in amount or are to be held for a short period of time rests in the sound discretion of the lawyer, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in that regard.

(iii) A lawyer may decline to participate in the IOLTA program by submitting a notice of such declination in writing, no less frequently than annually, to the Chief Justice of the Tennessee Supreme Court. In accordance with the provisions of Supreme Court Rule 43, such notice may be filed at the time the lawyer files the registration statement with the Board of Professional Responsibility.

(b) 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.

(c) 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.

COMMENTS

[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] The first paragraph of Section (a)(1) 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, whether or not they are a part of the Interest On Lawyers' Trust Accounts ("IOLTA") program, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 29.1.

[3] A lawyer is also responsible for assuring the payment of any bank charges or fees on such trust accounts. Section (a)(1)(i) 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.

[4] Similarly, Section (a)(1)(ii) of this Rule and Supreme Court Rule 43 authorize a bank participating in the IOLTA program to deduct from any interest generated from an IOLTA account service charges (other than overdraft charges), fees of the depository institution, and intangible taxes collected with respect to the deposited funds, so long as such deductions do not diminish client funds and are not charged to interest in other IOLTA accounts. *See* Supreme Court Rule 43, Section (1)(d).

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

[6] In order to allow a lawyer to pay appropriate bank charges or fees on a trust account, Section (a)(1)(i) 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 bank service charges, 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.

[7] 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.

[8] 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.

[9] 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.

[10] 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 (1993 and Supp. 1999) (Uniform Disposition of Unclaimed Property Act).

All of which is so ordered.

For the Court:

FRANK F. DROWOTA, III, CHIEF JUSTICE