



ARKANSAS JUDICIARY

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## **Rule 1.15. Safekeeping Property.**

(a) All lawyers 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.

(1) Funds of a client shall be deposited and maintained in one or more identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. The lawyer or law firm may not deposit funds belonging to the lawyer or law firm in any account designated as the trust account, other than the amount necessary to cover bank charges, or comply with the minimum balance required for the waiver of bank charges.

(2) Other property shall be identified as such and appropriately safeguarded.

(3) 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 the termination of the representation.

(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 property.

(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 interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d)(1) [NOTE: The effective date of that portion of Model Rule 1.15(d)(1) set out in bold wording immediately below, shall be effective July 1, 2002. See Per Curiam, February 21, 2002.] Each trust account referred to in (a) above shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government. Each such account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

(A) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(2) A lawyer who receives client funds which in the judgment of the lawyer are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing account for such funds. The account shall be maintained in compliance with the following requirements:

(A) The trust account shall be maintained in compliance with sections (a), (b) and (c) of this rule and the funds shall be subject to withdrawal upon request and without delay;

(B) No earnings from the account shall be made available to the lawyer or law firm; and,

(C) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

(3) All client funds shall be deposited in the account specified in section (d)(2) unless they are deposited in a separate interest-bearing account for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in (a) and (b) of this rule.

(4) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.

(5) The decision whether to use an account specified in section (d)(2) or an account specified in section (d)(3) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

(A) The amount of interest which the funds would earn during the period they are expected to be deposited; and,

(B) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(e) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (d)(3). Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(f) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on the following form in a manner designated by the Clerk of the Supreme Court.

(g) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas IOLTA Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

#### TRUST ACCOUNT/IOLTA CERTIFICATE

(All licensed lawyers in Arkansas must check the appropriate box and sign below)

? I am an [sic] lawyer who in the course of the practice of law in Arkansas receives or disburses client funds, and, in order to comply with the Model Rules of Professional Conduct Rule 1.15, I have (my law firm has; or the public or private entity for which I work has) established one or more pooled client trust account(s), all of which are interest-bearing for the benefit of the Arkansas IOLTA Foundation.

? I am engaged in the practice of law in Arkansas, but in the course of my practice I do not receive client funds.

? I am not required to maintain a client trust account because I do not practice law in Arkansas, receive client funds in Arkansas, or receive funds from Arkansas clients.

? Because I am a full-time judge, government lawyer or military lawyer, I do not handle client funds and do not maintain a client trust account.

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Signature of Lawyer Date Supreme Court Number

#### **Associated Court Rules:**

[Superseded] Arkansas Model Rules of Professional Conduct

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