STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO
MAINE RULES OF PROFESSIONAL CONDUCT

2015 Me. Rules 14

Effective: September 1, 2015

All of the Justices concurring therein, the following amendment to the Maine Rules of Professional Conduct is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 1.15 of the Maine Rules of Professional Conduct is amended as follows:

RULE 1.15 *SAFEKEEPING PROPERTY, CLIENT TRUST ACCOUNTS, INTEREST ON TRUST ACCOUNTS*

(a) A lawyer 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.

(b) (1) A lawyer shall deposit into a client trust account any advance payment of fees or retainer and any expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that an advance or retainer may be placed temporarily in a non-trust account, where necessary to effectuate payment by the client's chosen means (e.g., by credit card), so long as such funds are transferred promptly, and no later than two business days following receipt, into a client trust account. A lawyer shall not accept any advance payment or retainer into a non-trust account if the lawyer has any reason to suspect that the funds will not be successfully transferred into the client trust account within two business days of receipt. All such funds shall be deposited in one or more identifiable accounts

maintained ~~in the state in which the law office is situated at a financial institution authorized to do business in such state~~ pursuant to Maine Bar Rule 6. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and

(ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) A lawyer shall:

(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;

(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them, which records shall be kept by the lawyer and shall be preserved for a period of eight years after termination of the representation; and

(iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(3) Unless the client directs otherwise, when a lawyer or law firm reasonably expects that client funds will earn interest or dividends for the client in excess of the costs incurred to secure such income,

such funds shall be deposited in a client trust account that may be either

(i) Separate trust account for the particular client or client's matter, on which the earnings net of any transaction costs or other account-related charges will be paid or credited to the client; or

(ii) A pooled trust account with subaccounting which will provide for computation of earnings accrued on each client's funds and the payment thereon, net of any transaction costs or other account-related charges to the client.

(4) All funds of any client held by the lawyer or law firm that are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income shall be deposited in an Interest on Lawyer's Trust Account (IOLTA) account. The account ~~and~~ shall be ~~subject~~ established and maintained pursuant to Maine Bar Rule 6. ~~to the following conditions:~~

~~(i) The financial institution in which the account is established shall be authorized to do business in Maine, shall be insured by the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and shall be an eligible institution selected by the lawyer in the exercise of ordinary prudence. "Eligible Institution" is one determined by the Maine Bar Foundation in accordance with Rule 6(a)(2), (3) and (4);~~

~~(ii) Funds deposited in the account shall be subject to withdrawal upon request and without delay;~~

~~(iii) Within 30 days after the opening of any IOLTA account that is to be maintained hereunder, the lawyer or law firm shall file with the Board of Overseers of the Bar an order directing the financial institution to remit any net interest or dividends that may accrue on the account to the Maine Bar Foundation, a nonprofit corporation incorporated under the laws of the State of Maine that has in force a determination letter from the~~

~~Internal Revenue Service that it qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 as from time to time amended;~~

~~(iv) No interest or dividends on the account shall be paid to the lawyer or law firm, and the lawyer or law firm shall not receive any direct or indirect pecuniary benefit by reason of the remittance of interest in accordance with subparagraph (iii); and~~

~~(v) The determination of whether funds are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income, 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.~~

(5) [Reserved – abrogated by July 2015 amendment.] ~~A lawyer or a law firm, holding funds of the United States government that by law may not earn interest shall deposit those funds in one or more insured, non interest bearing accounts, whether or not the lawyer or firm has made the election provided by this paragraph for other client funds.~~

(6) [Reserved – abrogated by July 2015 amendment.] ~~If the circumstances on which a lawyer or law firm has based a determination to deposit client funds in an account under paragraph (4) of this subdivision change, so that interest or dividends in excess of costs may reasonably be expected to be earned on such funds, the lawyer or law firm shall transfer the principal amount originally deposited to the appropriate account established under paragraph (3) of this subdivision.~~

(7) For purposes of this rule, the following definitions apply:

(i) "Interest or dividends in excess of costs" means the net of interest or dividends earned on a particular amount of one client's funds over the administrative costs allocable to that amount. In estimating the gross amount of interest or

dividends to be earned, the lawyer or law firm shall consider the principal amount involved; available interest or dividend rates; and the time the funds are likely to be held, taking into account the likelihood of delay in any relevant proceeding or transaction.

(ii) "Administrative costs" means that portion of the following costs properly allocable to a particular amount of one client's funds paid to a lawyer or law firm:

(A) Financial institutional service charges for opening, maintaining, or closing an account, or accounting for the deposit and withdrawal of funds and payment of interest or dividends.

(B) Reasonable charges of the lawyer or law firm for opening, maintaining or closing an account; accounting for the deposit and withdrawal of funds and payment of interest or dividends; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest or dividends earned on a client's funds.

(c) [Reserved – included in (b), above.]

(d) 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.

(e) When in the course of representation, a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Upon termination of representation, a lawyer shall return to the client or retain and safeguard in a retrievable format all information and data in the lawyer's possession to which the client is entitled. Unless information and data are returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer's possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information.

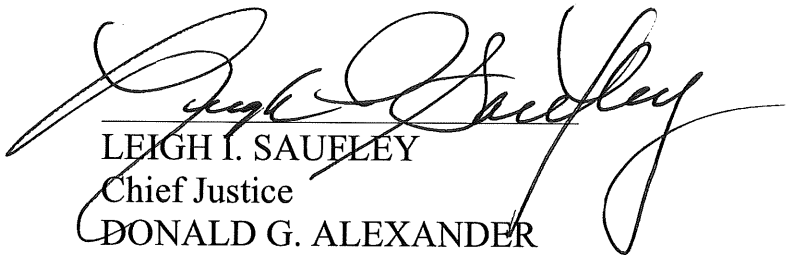
Advisory Note – July 2015

Rule 6 of the Maine Bar Rules (2015) addresses trust accounts. It comprehensively sets forth registration, maintenance and reporting requirements for trust accounts, including participation in the Interest on Lawyers' Trust Account program (IOLTA). Also addressed in Maine Bar Rule 6 is an overdraft notification rule. The trust account rules that had been included in Maine Rule of Professional Conduct 1.15 are therefore duplicative, and the Advisory Committee recommended deletion of the duplicate language from Rule 1.15 of the Maine Rules of Professional Conduct in view of the provisions now included in Maine Bar Rule 6.

2. This amendment to the Maine Rules of Professional Conduct shall be effective September 1, 2015.

Dated: July 23, 2015

FOR THE COURT*



LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rules Amendment Order was approved after conference of the Court, all Justices concurring therein.