

STATE OF MINNESOTA

IN SUPREME COURT

C8-84-1650

**ORDER PROMULGATING AMENDMENTS
TO THE RULES OF PROFESSIONAL CONDUCT**

On August 4, 2006, the Minnesota State Bar Association filed a petition recommending certain amendments to the Rules of Professional Conduct. This court held a hearing on the recommendations on December 13, 2006, reviewed the materials, and is fully advised in the premises.

IT IS HEREBY ORDERED that the attached amendments to the Rules of Professional Conduct be, and the same are, prescribed and promulgated to be effective July 1, 2007.

Dated: December 21, 2006

BY THE COURT:

/s/
Russell A. Anderson
Chief Justice

Amendments to Minnesota Rules of Professional Conduct

Rule 1.15

*(Text to be added indicated by underlining;
text to be deleted indicated by strike-out.)*

1 **RULE 1.15: SAFEKEEPING PROPERTY**

2 (a) All funds of clients or third persons held by a lawyer or law firm in connection with a
3 representation shall be deposited in one or more identifiable ~~interest-bearing~~ trust accounts as set
4 forth in paragraphs (d) through (g) and as defined in paragraph (o). No funds belonging to the
5 lawyer or law firm shall be deposited therein except as follows:

6 (1) funds of the lawyer or law firm reasonably sufficient to pay service charges
7 may be deposited therein;

8 (2) funds belonging in part to a client or third person and in part presently or
9 potentially to the lawyer or law firm must be deposited therein.

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13 (d) Each trust account referred to in paragraph (a) shall be an ~~interest-bearing~~ account in a
14 ~~bank, savings bank, trust company, savings and loan association, savings association, or~~
15 ~~federally regulated investment company~~ an eligible financial institution selected by a lawyer in
16 the exercise of ordinary prudence.

17 (e) A lawyer who receives client or third person funds shall maintain a pooled ~~interest~~
18 ~~bearing~~ trust account ("IOLTA account") for deposit of funds that are nominal in amount or
19 expected to be held for a short period of time. ~~The interest accruing on this account, net of any~~

20 ~~transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota~~
21 ~~Supreme Court.~~

22 (f) All client or third person funds shall be deposited in the account specified in
23 paragraph (e) unless they are deposited in a:

24 (1) separate ~~interest bearing~~ trust account for the particular third person, client, or
25 client's matter on which the ~~interest~~ earnings, net of any transaction costs, will be paid to
26 the client or third person; or

27 (2) pooled ~~interest bearing~~ trust account with subaccounting which will provide
28 for computation of ~~interest earned by~~ earnings accrued on each client's or third person's
29 funds and the payment thereof, net of any transaction costs, to the client.

30 (g) In determining whether to use the account specified in paragraph (e) or an account
31 specified in paragraph (f), a lawyer shall take into consideration the following factors:

32 (1) the amount of ~~interest~~ earnings which the funds would ~~earn~~ accrue during the
33 period they are expected to be deposited;

34 (2) the cost of establishing and administering the account, including the cost of
35 the lawyer's services;

36 (3) the capability of financial institutions described in paragraph (d) to calculate
37 and pay ~~interest~~ earnings to individual clients.

38 Only funds that could not accrue earnings for the client, net of the costs described in
39 subparagraph (2) above, may be placed or retained in the account specified in paragraph (e).

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43 (j) Lawyer trust accounts, including IOLTA accounts, shall be maintained only in eligible
44 financial institutions approved by the Office of Lawyers Professional Responsibility. Every
45 check, draft, electronic transfer, or other withdrawal instrument or authorization shall be
46 personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or
47 more lawyers authorized by the law firm.

48 (k) A financial institution, ~~shall~~ to be approved as a depository for lawyer trust accounts,
49 ~~if it~~ must files with the Office of Lawyers Professional Responsibility an agreement, in a form
50 provided by the Office, to report to the Office in the event any properly payable instrument is
51 presented against a lawyer trust account containing insufficient funds, irrespective of whether the
52 instrument is honored. The Lawyers Professional Responsibility Board shall establish rules
53 governing approval and termination of approved status for financial institutions, and shall
54 annually publish a list of approved financial institutions. No trust account shall be maintained in
55 any financial institution that does not agree to make such reports. Any such agreement shall
56 apply to all branches of the financial institution and shall not be canceled except upon three days
57 notice in writing to the Office.

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61 (o) Definitions.

62 “Trust account” is an account denominated as such in which a lawyer or law firm holds
63 funds on behalf of a client or third person(s) and is: 1) an interest-bearing checking account; 2) a
64 money market account with or tied to check-writing; 3) a sweep account which is a money
65 market fund or daily overnight financial institution repurchase agreement invested solely in or

66 fully collateralized by U.S. Government Securities; or 4) an open-end money market fund solely
67 invested in or fully collateralized by U.S. Government Securities. An open-end money market
68 fund must hold itself out as a money market fund as defined by applicable federal statutes and
69 regulations under the Investment Act of 1940, and, at the time of the investment, have total
70 assets of at least \$250,000,000. “U.S. Government Securities” refers to U.S. Treasury
71 obligations and obligations issued or guaranteed as to principal and interest by the United States
72 or any agency or instrumentality thereof. A daily overnight financial institution repurchase
73 agreement may be established only with an institution that is deemed to be “well capitalized” or
74 “adequately capitalized” as defined by applicable federal statutes and regulations.

75 “IOLTA account” is a pooled trust account in an eligible financial institution that has
76 agreed to:

77 (1) remit the earnings accruing on this account, net of any allowable reasonable fees,
78 monthly to the Lawyer Trust Account Board (LTAB) established by the Minnesota
79 Supreme Court;

80 (2) transmit with each remittance a report on a form approved by the LTAB that shall
81 identify each lawyer or law firm for whom the remittance is sent, the amount of
82 remittance attributable to each IOLTA account, the rate and type of earnings applied, the
83 amount of earnings accrued, the amount and type of fees deducted, if any, and the
84 average account balance for the period in which the report is made; and

85 (3) transmit to the depositing lawyer or law firm a report in accordance with normal
86 procedures for reporting to its depositors.

87 An approved eligible financial institution must pay no less on IOLTA accounts than (i)
88 the highest earnings rate generally available from the institution to its non-IOLTA customers on

89 each IOLTA account that meets the same minimum balance or other eligibility qualifications, or,
90 (ii) 80% of the Federal Funds Target Rate on all its IOLTA accounts. The rate to be paid shall
91 be fixed on the first day of each month, subject to rate changes during the month reflected in
92 normal month-end calculations. Accrued earnings and fees shall be calculated in accordance with
93 the eligible financial institution’s standard practice, but institutions may elect to pay a higher
94 earnings rate and may elect to waive any fees on IOLTA accounts. A financial institution may
95 choose to pay the higher sweep or money market account rates on a qualifying IOLTA checking
96 account.

97 “Allowable reasonable fees” for IOLTA accounts are per check charges, per deposit
98 charges, sweep fees and similar charges assessed against comparable accounts by the eligible
99 financial institution. All other fees are the responsibility of, and may be charged to, the lawyer
100 maintaining the IOLTA account. Fees or charges in excess of the earnings accrued on the
101 account for any month or quarter shall not be taken from earnings accrued on other IOLTA
102 accounts or from the principal of the account. Eligible financial institutions may elect to waive
103 any or all fees on IOLTA accounts.

104 ~~“Financial Institution” includes banks, savings and loan associations, savings banks, and~~
105 ~~any other businesses or persons that accept for deposit funds held in trust by lawyers.~~

106 “Eligible financial institution” for trust accounts is a bank or savings and loan
107 association authorized by federal or state law to do business in Minnesota, the deposits of which
108 are insured by an agency of the federal government, or is an open-end investment company
109 registered with the Securities and Exchange Commission authorized by federal or state law to do
110 business in Minnesota.

111 “Properly payable” refers to an instrument which, if presented in the normal course of
112 business, is in a form requiring payment under the laws of this jurisdiction.

113 “Notice of dishonor” refers to the notice which an eligible financial institution is required
114 to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution
115 dishonor.

