

In the  
Indiana Supreme Court

Cause No. 22S-MS-1



## Order Amending Indiana Rules of Professional Conduct

Under the authority vested in this Court to provide by rule for the procedures employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts in this state, the Indiana Rules of Professional Conduct are **AMENDED** as follows (deletions shown by **striking** and new text shown by **underlining**):

### Rules of Professional Conduct

#### Rule 1.15. Safekeeping Property

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(f) Except as provided in paragraph (g) of this rule, a lawyer or law firm shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time so that they could not earn income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

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(9) All **interest funds** transmitted to the Foundation **pursuant to this Rule** shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by the Foundation and approved at least **annually biennially** by the Supreme Court of Indiana, for the following purposes:

- (a) to pay or provide for all costs, expenses and fees associated with the administration of the **funds under this Rule IOLTA program**;
- (b) to establish appropriate reserves;
- (c) **to assist or establish approved pro bono programs as provided in Rule 6.6 to support civil legal assistance and pro bono programs in Indiana**;
- (d) for such other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

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(h) A lawyer, law firm, or estate of a deceased lawyer with unclaimed or unidentified funds in a client trust account shall take reasonable efforts to locate and to distribute the funds to the owner. Unclaimed funds are monies which a lawyer or firm is holding in a client trust account that should be distributed to a client or third party. Unidentified funds are monies for which the lawyer or firm cannot identify an owner.

(1) If a lawyer, law firm, or estate of a deceased lawyer cannot identify or locate the owner of funds in its IOLTA or non-IOLTA trust account, it shall pay the funds to the Indiana Bar Foundation for use in accordance with this Rule. Once the lawyer or law firm has an obligation to pay or distribute these funds, the lawyer or law firm has a period of five (5) years to identify or locate the owner of funds.

(2) A lawyer's or law firm's reasonable efforts to identify the owner of funds include a review of transaction records, client ledgers, case files, and any other relevant fee records. Reasonable efforts to locate the owner of funds include periodic correspondence of the type contemplated by the lawyer's or law firm's relationship with the client, former client, or third party. Should such correspondence prove unsuccessful, a lawyer's or law firm's reasonable efforts include efforts similar to those that would be undertaken when attempting to locate a person for service of process, such as examinations of local telephone directories, courthouse records, voter registration records, local tax records, motor vehicle records, or the use of consolidated online search services that access such records.

(3) A lawyer, law firm or lawyer's estate shall certify those reasonable efforts to locate or identify the owner before remitting such funds to the Indiana Bar Foundation. At the time such funds are remitted, the lawyer shall submit to the Indiana Bar Foundation the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known, along with the amount of any unclaimed or unidentified funds.

(4) If, within five (5) years of remitting unclaimed or unidentified funds to the Indiana Bar Foundation, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, the Indiana Bar Foundation shall refund the sum to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to the Foundation a verification attesting that the funds have been returned to the owner. The Indiana Bar Foundation shall maintain sufficient reserves to pay all claims for such funds.

(5) A lawyer's or law firm's remittance to the Indiana Bar Foundation under this paragraph (h) shall not constitute misconduct or grounds for discipline if the lawyer or law firm exercised reasonable efforts to locate the owner and distribute the funds, and remitted the funds to the Indiana Bar Foundation in good faith. A lawyer's or law firm's duty to locate the owner of unclaimed funds shall terminate once they have made reasonable efforts to locate the owner of those funds for a period of five (5) years, and

they have remitted the funds to the Indiana Bar Foundation. A lawyer or law firm shall include a provision in its engagement letter or fee agreement describing this Rule 1.15 process for unclaimed and unidentified funds. It is professional misconduct under Rule 8.4 of Indiana's Rules of Professional Conduct for a lawyer or law firm to remit unidentified or unclaimed funds to the Foundation prior to making reasonable efforts to locate the owner and distribute the funds.

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### **Comment**

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#### **Unclaimed or Unidentified Funds in a Client Trust Account**

[7] For purposes of paragraph (h), unidentified funds refer to funds accumulated in an IOLTA account that cannot be reasonably documented as belonging to a client, former client, third party, or the lawyer or law firm. Unclaimed funds refer to funds for which a client, former client, or third party appears to have an interest, but has not responded to the lawyer's or law firm's reasonable efforts to encourage the client, former client, or third party to claim their rightful funds.

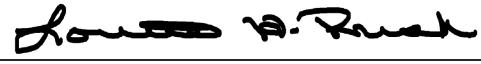
[8] The Indiana Bar Foundation shall make a standardized form with instructions available on the Foundation's website or by request for use by lawyers submitting unclaimed or unidentified funds to the Foundation.

[9] During the five (5) year period after unclaimed funds are remitted to the Foundation, the Foundation will strive to work with the Indiana Office of the Attorney General to continue reasonable efforts to contact the owners of these unclaimed funds.

[10] A lawyer or law firm that includes the language of 1.15(h) in their engagement letters or fee agreements shall receive protection from liability as long as they exercise reasonable efforts to identify the owner of unidentified funds and locate the owner of unclaimed funds.

This amendment is effective January 1, 2023.

Done at Indianapolis, Indiana, on 7/29/2022.



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.