

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the eleventh day of January, in the year two thousand and twenty-four:

present,

<u>KIMBERLY S. BUDD</u>)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	
<u>DAVID A. LOWY</u>)	Justices
)	
<u>ELSPETH B. CYPHER</u>)	
)	
<u>SCOTT L. KAFKER</u>)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
<u>SERGE GEORGES, JR.</u>)	

ORDERED: That Rule 3:07 of the Rules of the Supreme Judicial Court, which sets forth the Massachusetts Rules of Professional Conduct (Mass. R. Prof. C.), is hereby amended as follows:

Rule 3:07

By deleting the word "which" in the first and third sentences of Mass. R. Prof. C. 1.15 (e) (4), and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in the first sentence of Mass. R. Prof. C. 1.15 (e) (6), and inserting in lieu thereof the word "that."

Rule 3:07 By inserting the words "contemporaneous and" after the words "shall maintain" and before the words "complete records" in the first sentence of Mass. R. Prof. C. 1.15 (f).

Rule 3:07 By deleting the word "which" in Mass. R. Prof. C. 1.15 (f) (1) (E) (i), and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in the first sentence of Mass. R. Prof. C. 1.15 (f) (1) (E) (iii), and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in Mass. R. Prof. C. 1.15 (g) (2) (ii), and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in Mass. R. Prof. C. 1.15 (g) (4) (vi), and inserting in lieu thereof the word "that."

Rule 3:07 By deleting Mass. R. Prof. C. 1.15 (h) and inserting in lieu thereof new Mass. R. Prof. C. 1.15 (h) and (i), attached hereto.

Rule 3:07 By adding the following sentence at the end of Mass. R. Prof. C. 1.15 comment [6]:

A lawyer's inability to identify or locate the owner of funds held in the lawyer's IOLTA account does not relieve the lawyer of the

duties set forth in paragraph (c) of this Rule.

Rule 3:07 By deleting the word "Rule" in the first sentence of Mass. R. Prof. C. 1.15 comment [8] and inserting in lieu thereof the word "rule."

Rule 3:07 By deleting the word "which" in the first and second sentences of Mass. R. Prof. C. 1.15 comment [8], and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in the fifth sentence of Mass. R. Prof. C. 1.15 comment [10], and inserting in lieu thereof the word "that."

Rule 3:07 By deleting the word "which" in the second sentence of the second paragraph of Mass. R. Prof. C. 1.15 comment [11], and inserting in lieu thereof the word "that."

Rule 3:07 By adding new Mass. R. Prof. C. 1.15 comments [14], [15], [16], [17], and [18], attached hereto, after Mass. R. Prof. C. 1.15 comment [13].

Rule 3:07 By deleting the word "or" at the end of Mass. R. Prof. C. 1.15A (e) (2).

Rule 3:07 By deleting the period at the end of Mass. R. Prof. C. 1.15A (e) (3), and inserting in lieu thereof the following:

; or

(4) less than ten years have elapsed since unclaimed or unidentified funds potentially related to the client file have

been transferred to the IOLTA Committee pursuant to Rule 1.15(i).

Rule 3:07

By inserting the words "if less than 10 years have passed since funds relating to one or more client files were turned over to the IOLTA Committee under Rule 1.15(i)," after the words "intrinsically valuable documents under paragraph (d)," and before the words "or if the lawyer has agreed otherwise" in the second sentence of Mass. R. Prof. C. 1.15A comment [7].

The amendments accomplished by this order shall take effect on September 1, 2024.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	Chief Justice
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<u>FRANK M. GAZIANO</u>)	
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<u>DAVID A. LOWY</u>)	Justices
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<u>ELSPETH B. CYPHER</u>)	
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<u>SCOTT L. KAFKER</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
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<u>SERGE GEORGES, JR.</u>)	

Rule 3:07, Mass. R. Prof. C. 1.15 (h) and (i)

(h) Dishonored Check and IOLTA Account Inactivity Notification. All trust accounts shall be established in compliance with the following provisions:

(1) A lawyer shall maintain trust accounts only in financial institutions that have filed with the Board of Bar Overseers an agreement, in a form provided by the Board, (i) to report to the Board in the event any properly payable instrument is presented against any trust account that contains insufficient funds, and the financial institution dishonors the instrument for that reason in accordance with subparagraph (h)(4) of this Rule, and (ii) to report inactivity in an IOLTA account in accordance with subparagraphs (h)(5) and (h)(6) of this Rule.

(2) Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days' notice in writing to the Board.

(3) The Board shall publish annually a list of financial institutions that have signed agreements to comply with this Rule, and shall establish rules and procedures governing amendments to the list.

(4) The dishonored check notification agreement shall provide that all reports made by the financial institution shall be identical to the notice of dishonor customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors. Such reports shall be made simultaneously with the notice of dishonor and within the time provided by law for such notice, if any.

(5) The IOLTA account inactivity notification agreement shall provide that the financial institution shall give notice as follows:

(i) After two and one-half years of inactivity in an IOLTA account, the financial institution shall notify the lawyer and, if known, the law firm at which the lawyer last practiced while holding the account that the account has shown no activity for two and one-half years and that such inactivity shall be reported to the Board if it continues for six more months.

- (ii) After three years of inactivity in an IOLTA account, the financial institution shall notify the Board that the account is inactive, with copies to the lawyer and, if known, the law firm at which the lawyer last practiced while holding the account.

Inactivity shall be measured from the date of the last transaction or the date when the lawyer notifies the financial institution that the account shall remain open pursuant to subparagraph (h)(7) of this Rule, whichever is later. For purposes of this Rule, automatic interest accrual and disbursement of interest to the IOLTA Committee shall not constitute activity.

(6) The notifications required by subparagraph (h)(5) of this Rule shall contain the account name, the account number, the lawyer's (or law firm's) name, the current balance of the account, and the date and amount of the last transaction in the account other than automatic interest accrual and disbursement of interest to the IOLTA Committee.

(7) When a lawyer receives a copy of the inactivity notification that a financial institution sent to the Board, the lawyer shall close the account and distribute the funds either to the owner of the funds or to the IOLTA Committee, as applicable, unless the IOLTA account contains no unidentified or unclaimed funds, and the lawyer has a valid reason for maintaining the IOLTA account. The lawyer shall notify the Board in writing of the action taken or, if no action is taken, of the reason that the IOLTA account will remain open. If the IOLTA account will remain open, the lawyer shall also notify the financial institution in writing that the IOLTA account will remain open. If, within one year from the date the financial institution sent the inactivity notification to the Board, the lawyer neither closes the IOLTA account nor notifies the financial institution that the IOLTA account will remain open, the financial institution shall distribute the balance of the IOLTA account to the IOLTA Committee and close the IOLTA account.

(8) Every lawyer practicing or admitted to practice in this Commonwealth shall, as a condition thereof, be

conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(9) The following definitions shall be applicable to paragraph (h) of this Rule:

- (i) "Financial institution" includes (a) any bank, savings and loan association, credit union, or savings bank, and (b) with the written consent of the client or third person on whose behalf the trust property is held, any other business or person that accepts for deposit funds held in trust by lawyers.
- (ii) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this Commonwealth, upon presentation of an instrument that the institution dishonors.
- (iii) "Properly payable" refers to an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of this Commonwealth.

(i) Disposition of Unidentified and Unclaimed Funds in IOLTA Accounts

(1) When a lawyer discovers that an IOLTA account contains funds that the lawyer reasonably believes are unidentified funds or unclaimed funds, the lawyer shall promptly make reasonable and diligent efforts to identify the owner of the unidentified funds or locate the owner of the unclaimed funds and to transmit the funds to the owner.

(2) If the lawyer has made reasonable and diligent but unsuccessful efforts to identify the owner of unidentified funds or locate the owner of unclaimed funds, the lawyer may remit the funds to the IOLTA Committee at any time before the funds are required to be remitted to the IOLTA Committee pursuant to paragraph (i)(3) of this Rule.

(3) If the lawyer has been unable to identify the owner of unidentified funds or to locate the owner of unclaimed funds and transmit the funds to the owner within three years after discovering that the IOLTA account

contains unidentified or unclaimed funds, the lawyer shall remit the funds to the IOLTA Committee.

(4) When a lawyer remits funds to the IOLTA Committee pursuant to paragraph (i)(2) or (i)(3) of this Rule, (i) the lawyer shall provide a report to the IOLTA Committee in a form provided by the IOLTA Committee and shall comply with the procedures of the IOLTA Committee for the transfer of funds, and (ii) if the amount of funds transferred to the IOLTA Committee in a twelve-month period exceeds the applicable threshold amount, the lawyer shall, in a form provided by the Board, provide a report to the Board within 14 days of transferring the funds that bring the twelve-month total of funds transmitted to the IOLTA Committee above the applicable threshold amount.

(5) A lawyer shall:

- (i) respond to requests from the Board for information regarding the lawyer's efforts to identify or locate the owner of funds held in the lawyer's IOLTA account;
- (ii) cooperate with the Board in any investigation of a claim of ownership of funds previously remitted to the IOLTA Committee;
- (iii) notify the Board and the IOLTA Committee if the lawyer identifies or locates the owner of funds previously remitted to the IOLTA Committee pursuant to this section and make reasonable and diligent efforts to assist the owner in reclaiming the funds.

(6) The following definitions shall be applicable to paragraph (i) of this Rule:

- (i) "Unidentified funds" refer to funds in an IOLTA account, the owner of which cannot be identified.
- (ii) "Unclaimed funds" refer to funds in an IOLTA account, the owner of which can be identified but not located or contacted, or the owner of which can be located but has indicated an intent not to claim them.

- (iii) The "owner" of unidentified or unclaimed funds refers to the person on whose behalf the lawyer was holding the funds and any court-appointed representative of that person or the person's estate.

- (iv) The "applicable threshold amount" is \$500, or such amount as may be proposed by the Board, and after approval by the Supreme Judicial Court, published by the Board as the applicable threshold amount.

Rule 3:07, Mass. R. Prof. C. 1.15 comments [14], [15], [16], [17], and [18]

[14] The provisions of paragraphs (h)(1)(ii), (h)(5), (h)(6), (h)(7) and (i) were added to the Rule in response to the holding in Matter of Olchowski, 485 Mass. 807 (2020) ("Olchowski") that funds in an IOLTA account are not subject to the Massachusetts abandoned property law, G. L. c. 200A. The provisions of Rule 1.15(i) provide a means by which unidentified and unclaimed funds in lawyers' IOLTA accounts are to be transferred to the Massachusetts IOLTA Committee.

[15] Where a lawyer has failed to disburse funds from an IOLTA account because of uncertainty as to the ownership of such funds, or because the owner is known but cannot be located or has failed to negotiate the lawyer's IOLTA account check, the lawyer must make reasonable and diligent efforts to identify or locate the owners and remit the funds to the owner, as provided in subparagraph (i)(1) of this Rule. What constitutes reasonable and diligent efforts will depend on the circumstances, but may include, in the case of unidentified funds, a thorough review of bank records, accounting records, and client files; and, in the case of unclaimed funds, making inquiries of the client's family or acquaintances, examining public records, and conducting internet-based research. If such efforts are unsuccessful, paragraph (i)(3) requires the lawyer to transfer the unclaimed or unidentified funds to the IOLTA Committee after three years. Under paragraph (i)(2), a lawyer who has made a diligent but unsuccessful effort to identify the owner of unidentified funds or locate the owner of unclaimed funds may transfer the funds to the IOLTA Committee before the expiration of three years.

[16] Nothing in paragraphs (h) and (i) alters a lawyer's duties to maintain complete records of all funds in an IOLTA account, comply with all operational requirements for a trust account, and promptly disburse funds held in trust for clients or third parties when payment is due. Violations of Rule 1.15 or other rules that cause unidentified funds or unclaimed funds to accumulate in an IOLTA account may be grounds for discipline whether or not the lawyer transfers the funds to the IOLTA Committee in accordance with paragraph (i).

[17] The records associated with unclaimed and unidentified funds may be necessary to a later determination of ownership of those funds pursuant to Rule 1.15(i). Rule 1.15A prohibits a

lawyer who has transferred such funds from destroying the related client file or files for up to 10 years.

[18] The Olchowski decision and Rule 1.15 do not address how funds that are held in trust accounts other than IOLTA accounts and whose owner can be identified but not located or contacted are to be handled. Funds held in trust accounts other than IOLTA accounts and for which the owner cannot be located or contacted are governed by the Massachusetts abandoned property law, G.L. c. 200A.