Rule 1.15. Safekeeping property.

(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. Funds shall be kept in a separate account designated solely for funds held in connection with the practice of law in this jurisdiction. Except as provided in (g) with respect to IOLTA-eligible funds, such funds shall be maintained in the state in which the lawyer's office is situated or elsewhere with the consent of the client or third person. Funds of the lawyer that are reasonably sufficient to pay financial institution charges may be deposited in the separate account; however, such amount may not exceed $2,000 and must be separately stated and accounted for in the same manner as clients' funds deposited therein. Other property shall be identified as such and appropriately safeguarded. 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 completion of the events that they record.

(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 interests. 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) A lawyer engaged in the private practice of law in this jurisdiction, whether in an office situated in this jurisdiction or otherwise, must maintain on a current basis financial books and records relating to such practice, and shall preserve the books and records for at least five years

following the completion of the year to which they relate, or, as to fiduciary books and records, five years following the completion of that fiduciary obligation. The maintenance of books and records must conform with the following provisions:

(1) All bank statements, cancelled checks (or images and/or copies thereof as provided by the bank), records of electronic transfers, and duplicate deposit slips relating to fiduciary and non-fiduciary accounts must be preserved. Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed.

(2) Bank accounts maintained for fiduciary funds must be specifically designated as "Rule 1.15A Attorney Trust Account" or "1.15A Trust Account" or "Rule 1.15A Attorney Escrow Account" or "1.15A Escrow Account," and must be used only for funds held in a fiduciary capacity. A designation of the account as a "Rule 1.15A Attorney Trust Account" or "1.15A Trust Account" or "Rule 1.15A Attorney Escrow Account" or "1.15A Escrow Account," must appear in the account title on the bank statement. Other related statements, checks, deposit slips, and other documents maintained for fiduciary funds, must contain, at a minimum, a designation of the account as "Attorney Trust Account" or "Attorney Escrow Account."

(3) Bank accounts and related statements, checks, deposit slips, and other documents maintained for non-fiduciary funds must be specifically designated as "Attorney Business Account" or "Attorney Operating Account," and must be used only for funds held in a non-fiduciary capacity. A lawyer in the private practice of law shall maintain a non-fiduciary account for general operating purposes, and the account shall be separate from any of the lawyer's personal or other accounts.

(4) All records relating to property other than cash received by a lawyer in a fiduciary capacity shall be maintained and preserved. The records must describe with specificity the identity and location of such property.

(5) All billing records reflecting fees charged and other billings to clients or other parties must be maintained and preserved.

(6) Cash receipts and cash disbursement journals must be maintained and preserved for each bank account for the purpose of recording fiduciary and non-fiduciary transactions. A lawyer using a manual system for such purposes must total and balance the transaction columns on a monthly basis.

(7) A monthly reconciliation for each bank account, matching totals from the cash receipts and cash disbursement journals with the ending check register balance, must be performed. The reconciliation procedures, however, shall not be required for lawyers using a computer accounting system or a general ledger.

(8) The check register balance for each bank account must be reconciled monthly to the bank statement balance.

(9) Copies of retainer and compensation agreements with clients shall be maintained and preserved as required by Rule 1.5.

(10) Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf shall be maintained and preserved.

(11) Copies of records showing disbursements on behalf clients shall be maintained and preserved.

(12) With respect to all fiduciary accounts:

(A) A subsidiary ledger must be maintained and preserved with a separate account for each client or third party in which cash receipts and cash disbursement transactions and monthly balances are recorded.

(B) Monthly listings of client or third party balances must be prepared showing the name and balance of each client or third party, and the total of all balances.

(C) No funds disbursed for a client or third party must be in excess of funds received from that client or third party. If, however, through error funds disbursed for a client or third party exceed funds received from that client or third party, the lawyer shall transfer funds from the non-fiduciary account in a timely manner to cover the excess disbursement.

(D) The reconciled total cash balance must agree with the total of the client or third party balance listing. There shall be no unidentified client or third party funds. The bank reconciliation for a fiduciary account is not complete unless there is agreement with the total of client or third party accounts.

(E) If a check has been issued in an attempt to disburse funds, but remains outstanding (that is, the check has not cleared the trust or escrow bank account) six months or more from the date it was issued, a lawyer shall promptly take steps to contact the payee to determine the reason the check was not deposited by the payee, and shall issue a replacement check, as necessary and appropriate. With regard to abandoned or unclaimed trust funds, a lawyer shall comply with requirements of Supreme Court Rule 73.

(F) No funds of the lawyer shall be placed in or left in the account except as provided in Rule 1.15(a).

(G) No funds which should have been disbursed shall remain in the account, including, but not limited to, earned legal fees, which must be transferred to the lawyer's non-fiduciary account on a prompt and timely basis when earned.

(H) When a separate real estate bank account is maintained for settlement transactions, and when client or third party funds are received but not yet disbursed, a listing must be prepared on a monthly basis showing the name of the client or third party, the balance due to each client or third party, and the total of all such balances. The total must agree with the reconciled cash balance.

(I) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account.

(J) Withdrawals from a client trust account shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

(13) If a lawyer maintains financial books and records using a computer system, the lawyer must cause to be printed each month a hard copy of all monthly journals, ledgers, reports, and reconciliations, and/or cause to be created each month an electronic backup of these documents to be stored

in such a manner as to make them accessible for review by the lawyer and/or the auditor for the Lawyers' Fund for Client Protection.

(e) A lawyer's financial books and records must be subject to examination by the auditor for the Lawyers' Fund for Client Protection, for the purpose of verifying the accuracy of a certificate of compliance filed each year by the lawyer pursuant to Supreme Court Rule 69. The examination must be conducted so as to preserve, insofar as is consistent with these Rules, the confidential nature of the lawyer's books and records. If the lawyer's books and records are not located in Delaware, the lawyer may have the option either to produce the books and records at the lawyer's office in Delaware or to produce the books and records at the location outside of Delaware where they are ordinarily located. If the production occurs outside of Delaware, the lawyer shall pay any additional expenses incurred by the auditor for the purposes of an examination.

(f) A lawyer holding client or third-person funds must initially and reasonably determine whether the funds should or should not be placed in an interest or dividend-bearing account for the benefit of the client or third person. In making such a determination, the lawyer must consider the financial interests of the client or third person, the costs of establishing and maintaining the account, any tax reporting procedures or requirements, the nature of the transaction involved, the likelihood of delay in the relevant proceedings, and whether the funds are of a nominal amount or are expected to be held by the lawyer for a short period of time such that the costs incurred to secure income for the client or third person would exceed such income. A lawyer must at reasonable intervals consider whether changed circumstances would warrant a new determination with respect to the deposit of client or third-person funds. Except as provided in these Rules, interest or dividends earned on client or third-person funds placed into an interest or dividend-bearing account for the benefit of the client or third person (less any deductions for service charges or other fees of the depository institution) shall belong to the client or third person whose funds are deposited, and the lawyer shall have no right or claim to such interest or dividends, and may not otherwise receive any financial benefit or other economic concessions relating to a banking relationship with the institution where any account is maintained pursuant to this Rule.

(g) A lawyer holding client or third person funds who has reasonably determined, pursuant to subsection (f) of this Rule, that such funds need not be deposited into an interest or dividend-bearing account for the benefit of the client or third-person must establish and maintain one or more pooled trust/escrow accounts in a financial institution in Delaware for the deposit of all client or third person funds held in connection with the practice of law in this jurisdiction that are nominal in amount or to be held by the lawyer for a short period such that the costs incurred to secure income for the client or third person would exceed such income (IOLTA-eligible funds). This requirement shall not apply to a lawyer who either has obtained inactive status pursuant to Supreme Court Rule 69(d) or has obtained a Certificate of Retirement pursuant to Supreme Court Rule 69(f). Each pooled trust/escrow account must be established as a pooled interest or dividend-bearing account (IOLTA Account) in compliance with the provisions of this Rule, except those accounts exempted under section (h)(7) below. The lawyer shall have no right or claim to such interest or dividends, and may not otherwise receive any financial benefit or other economic concessions relating to a banking relationship with the institution where any account is maintained pursuant to this Rule.

(h) Lawyers may maintain IOLTA Accounts only in financial institutions that are approved by the Lawyers Fund For Client Protection pursuant to Rule 1.15A of these Rules, and are determined by the Delaware Bar Foundation (the Foundation) to be "eligible institutions". Eligible institutions are defined as those institutions that voluntarily offer a comparable interest rate on IOLTA Accounts and meet the other requirements of this Rule. A comparable interest rate on IOLTA Accounts means a rate that is no less than the highest rate of interest or dividends generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the comparable interest rate or dividend, an eligible institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting rates of interest or dividends for its customers, provided that such factors do not discriminate against IOLTA Accounts.

(1) An eligible institution may satisfy the comparable interest rate requirement by electing one of the following three options:

(A) establish the IOLTA Account as the comparable interest rate product;

(B) pay the comparable interest rate on the IOLTA Account in lieu of actually establishing the IOLTA Account as the comparable interest rate product; or

(C) pay the "Safe Harbor Rate" on the IOLTA Account (as posted on the Foundation's website). Until redetermined by the Foundation, the Safe Harbor Rate is the higher of 0.65% per annum or 65% of the Federal Funds Target Rate as of the first day of the IOLTA Account earnings period, net of Allowable Reasonable Service Charges and Fees (as defined in section (h)(5) below). The Safe Harbor Rate shall be reevaluated periodically, but no more frequently than every six months, by the Foundation to reflect an overall comparable interest rate offered by financial institutions in Delaware and may be redetermined by the Foundation following such reevaluation. Upon any such redetermination, the Foundation shall give at least 90 days advance written notice of the effective date of such redetermination to all eligible institutions maintaining any IOLTA Accounts and by posting on its website. Election of the Safe Harbor Rate is optional and eligible institutions may instead choose to satisfy compliance with this Rule by electing instead either option (A) or (B) above.

(2) IOLTA Accounts may be established as:

(A) a business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U. S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States government), and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S.

Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars ($250,000,000).

(B) a checking account paying preferred interest rates, such as market based or indexed rates;

(C) a public funds interest-bearing checking account such as an account used for governmental agencies and other non-profit organizations;

(D) an interest-bearing checking account such as a negotiable order of withdrawal (NOW) account; or business checking with interest; or

(E) any other interest or dividend-bearing account offered by the eligible institution to its non-IOLTA customers, which is commercially reasonable to use for a pooled account of short term or nominal amount funds.

(3) Nothing in this rule shall preclude an eligible institution from paying a higher rate of interest or dividends on IOLTA Accounts than described above or electing to waive service charges or fees on IOLTA Accounts.

(4) Interest and dividends on IOLTA Accounts shall be calculated in accordance with the eligible institution's standard practice for non-IOLTA customers.

(5) "Allowable Reasonable Service Charges or Fees" for IOLTA Accounts are defined as per check charges, per deposit charges, an account maintenance fee, automated transfer ("sweep") fees, FDIC insurance fees, and a reasonable IOLTA administrative fee for the direct costs of complying with the reporting and payment requirements of this rule. Allowable Reasonable Service Charges or Fees may only be deducted from interest or dividends on an IOLTA account at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No service charges or fees other than Allowable Reasonable Service Charges and Fees may be assessed against or deducted from the interest or dividends on an IOLTA Account. No Allowable Reasonable Service Charges or Fees on an IOLTA Account for any reporting period shall be taken from interest or dividends earned on other IOLTA Accounts, or from the principal balance of any IOLTA Account.

Any fees and services charges (other than Allowable Reasonable Service Charges and Fees deducted from interest on an IOLTA Account), including but not limited to bank overdraft fees, wire transfer fees, remote deposit fees and fees for checks returned for insufficient funds, shall be the sole responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Nothing in this Rule shall prohibit a lawyer or law firm maintaining an IOLTA account from recouping fees charged to their IOLTA account from the appropriate client on whose behalf the fee was incurred and as otherwise provided for in the Rules of Professional Conduct.

(6) Lawyers or law firms depositing client or third party funds in an IOLTA Account under this paragraph (h) shall direct the eligible institution:

(A) to remit interest monthly, or, with the consent of the Foundation, quarterly (net of any Allowable Reasonable Service Charges or Fees), computed on the average monthly balance in the account or otherwise computed in accordance with the institution's standard practices, provided that the eligible institution may elect to waive any or all such charges and fees;

(B) to transmit with each remittance to the Foundation a report in a form and through any reasonable manner of transmission approved by the Foundation showing the name of the lawyer or law firm on each IOLTA Account whose remittance is sent, the IOLTA Account number for each account, the amount of interest attributable to each IOLTA Account, the time period covered by the report, the rate of interest or dividend applied, the amount and type of Allowable Reasonable Service Charges or Fees deducted, if any, the average account balance for the period for which the report was made, the net amount of interest remitted for the period and such other information as may be reasonably required by the Foundation; and

(C) to transmit to the depositing lawyer or law firm a statement in accordance with normal procedures for reporting to depositors of the eligible institution.

(7) Any IOLTA account which has not or cannot reasonably be expected to generate interest or dividends in excess of Allowable Reasonable

Service Charges or Fees, may, under criteria established by the Foundation, be exempted by the Foundation from required participation in the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. The lawyer or law firm whose account has been exempted will annually certify to the Supreme Court, as part of its Annual Certificate of Compliance, that the lawyer or law firm expects no material increase in activity in its exempted trust/escrow account during the 12 months following the date of the filing of the Certificate. The Foundation will review exempted accounts and may revoke the exemption if it determines that the account can generate interest or dividends in excess of Allowable Reasonable Service Charges and Fees.

(8) In order for the Foundation to be able to determine that all pooled trust/escrow accounts are properly identified by the eligible institutions, each lawyer or law firm that maintains a pooled trust/escrow account is deemed to have authorized the Foundation to have access to the pooled trust/escrow account-related information contained within its Annual Certificate of Compliance, filed annually with the Supreme Court. In addition, when a lawyer or law firm requests an eligible institution to open an IOLTA account, the lawyer or law firm will submit the request in writing to the institution, using the designated form letter located on the Foundation's website, with a copy of said letter to be sent to the Foundation by the lawyer or law firm.

(9) Should the Foundation determine that an IOLTA Account of a financial institution has failed to comply with the provisions of this Rule, the Foundation shall notify the affected lawyer or law firm and the financial institution of such failure to comply, specifying the corrective action needed, with a reasonable time specified by the Foundation for the compliance to be achieved, but no longer than 90 days. Should compliance not be achieved within the time specified, the Foundation shall notify the affected lawyer or law firm, the financial institution and the Office of Disciplinary Counsel.

(i) The funds transmitted to the Foundation shall be available for distribution for the following purposes:

(1) To improve the administration of justice;

(2) To provide and to enhance the delivery of legal services to the poor;

(3) To support law related education;

(4) For such other purposes that serve the public interest.

The Delaware Bar Foundation shall recommend for the approval of the Supreme Court of the State of Delaware, such distributions as it may deem appropriate. Distributions shall be made only upon the Court's approval.

(j) Lawyers or law firms, depositing client or third party funds in a pooled trust/escrow account under this paragraph shall not be required to advise the client or third party of such deposit or of the purposes to which the interest accumulated by reason of such deposits is to be directed.

(k) A lawyer shall not disburse fiduciary funds from a bank account unless the funds deposited in the lawyer's fiduciary account to be disbursed, or the funds which are in the lawyer's unrestricted possession and control and are or will be timely deposited, are good funds as hereinafter defined. "Good funds" shall mean:

(1) cash;

(2) electronic fund ("wire") transfer;

(3) certified check;

(4) bank cashier's check or treasurer's check;

(5) U.S. Treasury or State of Delaware Treasury check;

(6) Check drawn on a separate trust or escrow account of an attorney engaged in the private practice of law in the State of Delaware held in a fiduciary capacity, including his or her client's funds;

(7) Check of an insurance company that is authorized by the Insurance Commissioner of Delaware to transact insurance business in Delaware;

(8) Check in an amount no greater than $10,000.00;

(9) Check greater than $10,000.00, which has been actually and finally collected and may be drawn against under federal or state banking regulations then in effect;

(10) Check drawn on an escrow account of a real estate broker licensed by the state of Delaware up to the limit of guarantee provided per

transaction by statute. (Amended, effective Jan. 1, 2004; Oct. 20, 2008, effective Jan. 1, 2009; Dec. 12, 2008, effective Jan. 1, 2009; Feb. 16, 2010, effective May 1, 2010; June 10, 2010, effective Nov. 1, 2010; effective Apr. 25, 2012; effective Jan. 21, 2015.)

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[4] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[5] The extensive provisions contained in Rule 1.15(d) represent the financial recordkeeping requirements that lawyers must follow when engaged in the private practice of law in this jurisdiction. These provisions are also reflected in a certificate of compliance that is included in each lawyer's registration statement, filed annually pursuant to Delaware Supreme Court Rule 69.

[6] Compliance with these provisions provides the necessary level of control to safeguard client and third party funds, as well as the lawyer's operating funds. When these recordkeeping procedures are not performed on a prompt and timely basis, there will be a loss of control by the lawyer, resulting in insufficient safeguards over client and other property.

[7] Rule 1.15(d)(12)(I) and (J) enumerate minimal accounting controls for client trust accounts. They also enunciate the requirement that only a lawyer admitted to the practice of law in Delaware or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorize electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See, Rules 5.1 and 5.3 of the Delaware Lawyers Rules of Professional Conduct.

[8] Authorized electronic transfers shall be limited to

(1) money required for payment to a client or third person on behalf of a client;

(2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation;

(3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or

(4) money transferred from one client trust account to another client trust account.

[9] Some of the essential financial recordkeeping issues for lawyers under this Rule include the following:

(a) Segregation of funds. Improper commingling occurs when the lawyer's funds are deposited in an account intended for the holding of client and third party funds, or when client funds are deposited in an account intended for the holding of the lawyer's funds. The only exception is found in Rule 1.15(a), which allows a lawyer to maintain $500 of the lawyer's funds in the fiduciary account in order to cover possible bank service charges. Keeping an accurate account of each client's funds is more difficult if client funds are combined with the lawyer's own funds. The requirement of separate bank accounts for lawyer funds and non-lawyer funds, with separate bookkeeping procedures for each, is intended to avoid commingling.

(b) Deposits of legal fees. Unearned legal fees are the property of the client until earned, and therefore must be deposited into the lawyer's fiduciary account. Legal fees must be withdrawn from the fiduciary account and transferred to the operating or business account promptly upon being earned, to avoid improper commingling. The monthly listing of client and third party funds in the fiduciary account should therefore be carefully reviewed in order to determine whether any earned legal fees remain in the account.

(c) Identity of property. The identity and location of client funds and other property must be maintained at all times. Accordingly, every cash receipt and disbursement transaction in the fiduciary account must be specifically identified by the name of the client or third party. If financial books and records are maintained in the manner, the resultant control should ensure that there are no unidentified funds in the lawyer's possession.

(d) Disbursement of funds. Funds due to clients or third parties must be disbursed without unnecessary delay. The monthly listing of client funds in the fiduciary account should therefore be reviewed carefully in order to determine whether any balances due to clients or third parties remain in the account.

(e) Negative balances. The disbursement of client or third party funds in an amount greater than the amount being held for such client or third party results in a negative balance in the fiduciary account. This should never occur when the proper controls are in place. However, if a negative

balance occurs by mistake or oversight, the lawyer must make a timely transfer of funds from the operating account to the fiduciary account in order to cover the excess disbursement and cure the negative balance. Such mistakes can be avoided by making certain that the client balance sufficiently covers a potential disbursement prior to making the actual disbursement.

(f) Reconciliations. Reconciled cash balances in the fiduciary accounts must agree with the totals of client balances held. Only by performing a reconciliation procedure will the lawyer be assured that the cash balance in the fiduciary account exactly covers the balance of client and third party funds that the lawyer is holding.

(g) Real estate accounts. Bank accounts used exclusively for real estate settlement transactions are fiduciary accounts, and are therefore subject to the same recordkeeping requirements as other such accounts, except that cash receipts and cash disbursements journals are not required.

[10] Illustrations of some of the accounting terms that lawyers need to be aware of, as used in this Rule, include the following:

(a) Financial books and records include all paper documents or computer files in which fiduciary and non-fiduciary transactions are individually recorded, balanced, reconciled, and totalled. Such records include cash receipts and cash disbursements journals, general and subsidiary journals, periodic reports, monthly reconciliations, listings, and so on.

(b) The cash receipts journal is a monthly listing of all deposits made during the month and identified by date, source name, and amount, and in distribution columns, the nature of the funds received, such as “fee income” or “advance from client,” and so on. Such a journal is maintained for each bank account.

(c) The cash disbursements journal is a listing of all check payments made during the month and identified by date, payee name, check number, and amount, and in distribution columns, the nature of funds disbursed, such as “rent” or “payroll,”and so on. Such a journal is maintained for each bank account. Cash receipts and cash disbursement records may be maintained in one consolidated journal.

(d) Totals and balances refer to the procedures that the lawyer needs to perform when using a manual system for accounting purposes, in order to ensure that the totals in the monthly cash receipts and cash disbursements journal are correct. The cash and distribution columns must be added up for each month, then the total cash received or disbursed must be compared with the total of all of the distribution columns.

(e) The ending check register balance is the accumulated net cash balance of all deposits, check payments, and adjustments for each bank account. This balance will not normally agree with the bank balance appearing on the end-of-month bank statement because deposits and checks may not clear with the bank until the next statement period. This is why a reconciliation is necessary.

(f) The reconciled monthly cash balance is the bank balance conformed to the check register balance by taking into account the items recorded in the check register which have not cleared the bank. For example:

Account balance, per bank statement	$2,000.00
Add — deposits in transit (deposits in check register that do not appear on bank statement)	$1,500.00
Less — outstanding checks (checks entered in check register that do not appear on bank statement)	(1,800.00)
Reconciled cash balance	$1,700.00

(g) The general ledger is a yearly record in which all of a lawyer's transactions are recorded and grouped by type, such as cash received, cash disbursed, fee income, funds due to clients, and so on. Each type of transaction recorded in the general ledger is also summarized as an aggregate balance. For example, the ledger shows cash balances for each bank account which represent the accumulation of the beginning balance, all of the deposits in the period, and all of the checks issued in the period.

(h) The subsidiary ledger is the list of transactions shown by each individual client or third party, with the individual balances of each (as contrasted to the general ledger, which lists the total balances in an aggregate amount "due to clients"). The total of all of the individual client and third party balances in the subsidiary ledger should agree with the total account balance in the general ledger.

(i) A variance occurs in a reconciliation procedure when two figures which should agree do not in fact agree. For example, a variance occurs when the reconciled cash balance in a fiduciary account does not agree with the total of client and third party funds that the lawyer is actually holding.

[11] Accrued interest on client and other funds in a lawyer's possession is not the property of the lawyer, but is generally considered to be the property of the owner of the principal. An exception to this legal principle relates to nominal amounts of interest on principal. A lawyer must reasonably determine if the transactional or other costs of tracking and transferring such interest to the owners of the principal are greater than the amount of the interest itself. The lawyer's proper determination along these lines will result in the lawyer's depositing of fiduciary funds into an interest-bearing account for the benefit of the owners of the principal, or into a pooled interest-bearing account. If funds are deposited into a pooled account, the interest is to be transferred (with some exception) to the Delaware Bar Foundation pursuant to the Delaware Supreme Court's Interest On Lawyer Trust Accounts Program ("IOLTA").

[12] Implicit in the principles underlying Rule 1.15 is the strict prohibition against the misappropriation of client or third party funds. Misappropriation of fiduciary funds is clearly a violation of the lawyer's obligation to safeguard client and other funds. Moreover, intentional or knowing misappropriation may also be a violation Rule 8.4(b) (criminal conduct in the form of theft) and Rule 8.4(c) (general dishonest or deceptive conduct). Intentional or knowing misappropriation is considered to be one of the most serious acts of professional misconduct in which a lawyer can engage, and typically results in severe disciplinary sanctions.

[13] Misappropriation includes any unauthorized taking by a lawyer of client or other property, even for benign reasons or where there is an intent to replenish such funds. Although misappropriation by mistake, neglect, or recklessness is not as serious as intentional or knowing misappropriation, it can nevertheless result in severe disciplinary sanctions. See, e.g. Matter of Figliola, Del. Supr., 652 A.2d 1071, 1076-78 (1995).

Revisor's note. — The Report on compliance with Rule 1.15 of the Delaware Rules of Professional Conduct and the applicable guidelines and audit program appear as Rule VII of the Regulations of the Trustees of the Lawyer's Fund for Client Protection.

The bracketed paragraph designation "(g)" in paragraph (h) and the bracketed letter "s" at the end of the word "accounts" in subdivision (l) were inserted by the publisher.

Effect of amendments. — The 2015 amendment, effective Jan. 21, 2015, substituted "$2,000" for "$1000" in the fourth sentence of (a).

NOTES TO DECISIONS

Analysis

Client relations.

— Client funds.

—— Delivery.

Respondent violated subsection (b) of this Rule by negligently failing to account for and deliver to daughter, upon her majority, the net proceeds of the wrongful death settlement arising from her mother's fatal automobile accident. In re Barrett, 630 A.2d 652 (Del. 1993).

When an attorney failed to distribute estate funds from the estate account to beneficiaries and other third persons for almost 3 years after the deceased's death, the attorney violated Law. R. Prof. Conduct 1.15(b). In re Wilson, 886 A.2d 1279 (Del. 2005).

—— Safeguarding.

The Client's Security Trust Fund's (CSTF) efforts to assist lawyers do not absolve lawyers of the duty to read and follow Interpretive Guideline No. 2, which provides for the preservation of funds and property of clients; compliance checks performed under CSTF's direction are not audits and are not intended to verify the correctness of entries in an attorney's books and records. In re Figliola, 652 A.2d 1071 (Del. 1995).

Attorney's failing to preserve complete records of account funds, his failing to safeguard a client's funds, and his loss of a file violated subsection (a). In re Maguire, 725 A.2d 417 (Del. 1999).

Attorney's failing to comply with requirements for keeping books and records as set forth in Interpretive Guideline No. 2 violated subsection (d). In re Maguire, 725 A.2d 417 (Del. 1999).

Lawyer was disbarred for the misappropriation of client funds for the lawyer's personal use, and the failure to establish a separate account for the proceeds of the sale of a client's house, despite evidence of the lawyer's personal and emotional problems. In re Carey, 809 A.2d 563 (Del. 2002).

When an attorney admitted that he had failed to keep his property separate from that of his clients, as there were negative balances in 41 client escrow accounts and significant unidentified client funds, and he failed to pay payroll taxes for his employees for five years, totaling approximately $64,000, with estimated penalties, he was suspended from the practice of law for 3 years, with the right to seek reinstatement in 6 months. In re Landis, 850 A.2d 291 (Del. 2004).

Attorney's acceptance of a retainer of $250 from a client through a prepaid legal plan, while never contacting the client and refusing to refund the retainer until after the first disciplinary hearing, was held to have violated Law. Prof. Conduct R. 1.3, with regard to acting with reasonable diligence and promptness, Law. Prof. Conduct R. 1.4(a) and (b), with regard to failing to keep the client reasonably informed to the extent reasonably necessary to permit the client to make informed decisions, and, Law. Prof. Conduct R. 1.15(b) and (d), with regard to failing to safeguard the client's funds and deliver them upon request; the prepaid legal firm had refused to refund the retainer and, in fact, showed no record of the amount, which had been paid directly to the attorney. In re Chasanov, 869 A.2d 327 (Del. 2005).

Law. R. Prof. Conduct 1.15(a), 1.15(d), 1.15A, 1.16(d), 3.4(c), 8.1(b), 8.4(d) were violated when for several years the attorney mishandled and improperly accounted for the attorney's client's funds and the attorney's escrow account and inaccurately completed certificates of compliance; the attorney was suspended for 3 years, could apply for reinstatement after 2 years if the attorney fulfilled conditions, and could not return to solo practice. In re Fountain, 878 A.2d 1167 (Del. 2005).

Attorney was disbarred after having been found to have violated Law. R. Prof. Conduct 1.15 and Law. R. Prof. Conduct 8.4 by misappropriating clients funds and failing to identify a bank account as a law practice account; the attorney's conduct was found to have been intentional and no mitigating factors were present where it was shown that the attorney took a long time to provide a client with refinancing proceeds and, when the attorney did, the check was returned for insufficient funds, and the attorney used a septic system escrow deposit to cover another check that the attorney had written. In re Garrett, 909 A.2d 103 (Del. 2006).

Attorney violated Law. R. Prof. Conduct 1.15(a) by failing to deposit and safeguard an advance fee of $1,500 in a client trust account until earned. In re Pankowski, 947 A.2d 1122 (Del. 2007).

Attorney whose child stole funds from the attorney's escrow account was publicly reprimanded for violating, inter alia, Law. Prof. Conduct R. 1.15(a), (b), and (d), by failing to safeguard client funds, failing to

promptly deliver funds to clients and failing to maintain the attorney's books and records. In re Otlowski, 976 A.2d 172 (Del. 2009).

Attorney was suspended for 1 year, with the suspension to run retroactively to the date the attorney was transferred to disability inactive status, for violating Law. R. Prof. Conduct 1.15 by: (1) permitting checks to be issued to the attorney's operating account from client escrow accounts that were not earned; (2) transferring unearned funds to the attorney's own self from client escrow accounts; and (3) failing to properly maintain books and records. In re Nowak, 5 A.3d 631 (Del. 2010).

Attorney was suspended for 3 months, followed by 18 months of conditional probation, for having violated Law Prof. Conduct R. 1.5(f), 1.7(a), 1.15(a), 1.16(d) by: (1) having a conflict of interest with 2 clients; (2) having a personal interest in a loan transaction; (3) failing to safeguard client funds; and (4) failing to provide a new client with a fee agreement. In re O'Brien, 26 A.3d 203 (Del. 2011).

Attorney did not violate Law. Prof. Conduct R. 1.15, where the attorney not only refunded to a client the entire retainer of $1,500, but used $750 in personal funds to reimburse the client so that the client would not have to await the outcome of a receivership; the attorney undertook the burden of awaiting the outcome of the receivership from the client. In re Sisk, 54 A.3d 257 (Del. 2012).

Attorney who was involved in various real estate closings committed violations of the professional conduct rules by using other clients' funds in the firm's trust account to fund all or part of the buyer's contribution in certain settlements. In re Sanclemente, 86 A.3d 1119 (Del. 2014).

Attorney violated the Rules of Professional Conduct in handling real estate closings by using other clients' funds in the firm's trust account to fund part (or all) of the buyer's contribution in certain settlements. In re Sullivan, 86 A.3d 1119 (Del. 2014).

Based on a report by the Board on Professional Responsibility, there was clear and convincing evidence that an attorney engaged in criminal conduct worthy of suspension by: (1) misappropriating funds from the attorney's employer over a 5-year period; (2) engaging in dishonest

conduct by lying to the attorney's mortgage company; and (3) forging the employer's signature. In re Lankenau, 138 A.3d 1151 (Del. 2016).

The Delaware Supreme Court accepted the Board on Professional Responsibility's findings and recommendation for discipline, publicly reprimanding and placing the attorney on a 2-year period of probation with the imposition of specific conditions, because the attorney failed to provide the client with a fee agreement and/or statement of earned fees withdrawn from the trust account, to identify and safeguard client fund, to maintain financial books and records or to supervise nonlawyer assistants; the attorney had engaged in conduct involving misrepresentation, prejudicial to the administration of justice. In re Malik, 167 A.3d 1189 (Del. 2017).

Former client failed to sufficiently plead a counterclaim claim for misappropriation of client funds against the attorney because: (1) the instant action sought declaratory relief regarding the distribution of certain funds being lawfully held in the attorney's IOLTA trust account according to the retainer agreement; and (2) while the attorney attempted to distribute the funds in the account, the client contested the attorney's accounting. Pazuniak Law Office LLC v. Pi-Net Int'l, Inc., — A.3d —, 2017 Del. Super. LEXIS 419 (Del. Super. Ct. Aug. 25, 2017).

Board on Professional Responsibility correctly assigned a 6-month suspension with conditions for violation of Law. Prof. Conduct R. 1.15, 5.3 and 8.4 because: (1) the Board considered the attorney's state of mind and concluded the attorney, as managing partner, was at least negligent in overseeing 2 non-attorneys to ensure the books and records were maintained in compliance with the rules; (2) the attorney knew of rule violations due to the negative balances in the account; (3) the attorney filed an inaccurate 2015 Certificate of Compliance with the Delaware Supreme Court that misrepresented the law firm's compliance with the rule on safekeeping property; (4) the covering funds relied on by the Board on Professional Responsibility should not have been considered a substitute for negative balances in the client subsidiary ledger; (5) the law firm had a duty to safeguard the clients' property but failed to do so; and (6) as a managing partner who failed to supervise non-attorney employees, the attorney was responsible for those deficiencies. In re Beauregard, 189 A.3d 1236 (Del. 2018).

Law firms.

— Bookkeeping.

Attorney was publicly reprimanded and subject to a public two-year period of probation for her violations of subsections (b) and (d) of this Rule, former Interpretive Guideline No. 2, and Rule 8.4(d), for failing to pay various federal and state employee and employer payroll taxes in a timely manner, for failing to maintain her law practice books and records, by failing to file her 1998 and 1999 federal unemployment tax returns until October 2000, and by making consistently delinquent filings and payment in connection with other law practice payroll tax obligations, and for certifying to the court that her law practice books and records were in compliance with the requirements of this Rule and that her tax obligations were paid in a timely manner. In re Benson, 774 A.2d 258 (Del. 2001).

Where an attorney, the managing partner of a firm, admitted to violating Del. Law. R. Prof. Conduct 1.15 and multiple other provisions of the Rules of Professional Conduct, and where a witness testified unequivocally that the attorney instructed the witness to transfer escrow funds to the firm's operating account, and client trust funds had to be, and were, invaded, the Office of Disciplinary Counsel's recommended public reprimand was rejected, and the attorney was suspended from the practice of law for six months and one day; a managing partner of a law firm had enhanced duties to ensure that the law firm complied with its recordkeeping and tax obligations, and the managing partner had to discharge those responsibilities faithfully and with the utmost diligence. In re Bailey, 821 A.2d 851 (Del. 2003).

Attorney was publicly reprimanded and was ordered to serve a public 2-year probation period for violating Law. R. Prof. Conduct 1.15(d) by failing to properly maintain the attorney's law practice books, records and bank accounts; the attorney's substantial experience, multiple offenses and attitude toward the offenses offset the attorney's lack of a prior disciplinary record, extensive remedial efforts, full cooperation and lack of injury to a client. In re Member of the Bar of the Supreme Court, 985 A.2d 391 (Del. 2009).

Following a self-reported embezzlement by a member of the attorney's staff, the attorney failed to obtain court-ordered precertification by a

licensed certified public accountant for 2 years of certificates of compliance, reporting the status of recordkeeping with regard to requirements of Law Prof. Conduct R. 1.15 and Law Prof. Conduct R. 1.15A; because the absence of any injury to clients did not excuse the misconduct, the attorney's repeated violations of Law. Disc. P. R. 7(c) and Law Prof. Conduct R. 8.4(d) supported an imposition of a public reprimand with conditions. In re Holfeld, 74 A.3d 605 (Del. 2013).

Attorney violated various disciplinary rules because the results of an audit showed the attorney's failure to adequately maintain books and records, to safeguard client funds or to indicate in the retainer that unearned fees were refundable. In re A Member of the Bar of the Supreme Court of Delaware: Fred Bar, 99 A.3d 639 (Del. 2013).

Attorney's admissions and the record established that the attorney violated Law. Prof. Conduct R. 1.5, 5.3, 8.4(c) and (d), resulting in 2 years' probation, by: (1) misrepresenting to the court the attorney's maintenance of records; and (2) failing to properly maintain them, to safeguard client funds, to provide for reasonable safeguards to assure accurate accounting, to supervise nonlawyer staff, and to timely file and pay taxes. In re Gray, 152 A.3d 581 (Del. 2016).

— Reprimand.

Where attorney violated Rule 1.2(a), Rule 1.3, Rule 1.4(a) and (b), Rule 1.15(a) and (d), Rule 1.16(b) and (d), and Rule 3.4 (c), attorney agreed to pay all the costs of the disciplinary proceedings, the costs of the investigatory audits performed by the Lawyers' Fund for Client Protection, the restitution noted in the parties stipulation, and consented to the imposition of a public reprimand with a public four-year probation with conditions. In re Solomon, 745 A.2d 874 (Del. 1999).

Attorney was publicly reprimanded and was ordered to serve a public 2-year probation period for violating Law. R. Prof. Conduct 8.4(c) by filing certificates of compliance containing inaccurate representations as to compliance with R. Prof. Conduct 1.15 with reference to the attorney's law practice bank accounts; the attorney's substantial experience, multiple offenses and attitude toward the offenses offset the attorney's lack of a prior disciplinary record, extensive remedial efforts, full cooperation and

lack of injury to a client. In re Member of the Bar of the Supreme Court, 985 A.2d 391 (Del. 2009).

Attorney was publicly reprimanded and ordered to serve a public 2-year probation period for violating Law. R. Prof. Conduct 1.15(a) by failing to timely transfer earned attorneys' fees from the attorney's escrow account to the attorney's operating account, and by failing to ensure that negative client balances in the escrow account were corrected monthly; the attorney's substantial experience, multiple offenses and attitude toward the offenses offset the attorney's lack of a prior disciplinary record, extensive remedial efforts, full cooperation and lack of injury to a client. In re Member of the Bar of the Supreme Court, 985 A.2d 391 (Del. 2009).

Attorney's failure to maintain law office books and records, filing certificates of compliance with annual registration statements that indicated maintenance of such documentation, and failure to file and pay taxes violated Law. R. Prof. Conduct 1.15(d) and Law. R. Prof. Conduct 8.4(c), (d); a public reprimand was imposed. In re Witherell, 998 A.2d 852 (Del. 2010).

Because an attorney neglected client's matters, failed to promptly disburse client funds, and failed to cooperate with disciplinary authorities, the attorney violated Law. R. Prof. Conduct 1.1, 1.3, 1.4(a)(3), (4), 1.15(d), and 8.1(b); accordingly, the attorney was publicly reprimanded and placed on probation for 18 months with the imposition of certain conditions. In re Member of the Bar of the Supreme Court of Del., 999 A.2d 853 (Del. 2010).

The appropriate sanction was a public reprimand and 1 year probation period where: (1) an attorney violated the conditions of a previously imposed private admonition by failing to provide a required precertification and not promptly paying various payroll taxes; (2) the attorney admitted to violating Law. Disc. P. R. 7(c) and Law Prof. Conduct R. 1.15(b), 1.15(d), 5.3, 8.4(c), and 8.4(d); (3) the attorney's violations were not isolated incidents but were repeat violations; (4) the attorney failed to adequately supervise a nonlawyer assistant to assure an accurate accounting of the firm's books and records; and (5) the attorney disregarded the conditions imposed on the private admonition. In re Martin, 35 A.3d 419 (Del. 2011).

Attorney was publicly reprimanded and placed on conditional probation for violating Law. Prof. Conduct R. 1.1, 1.3, 1.4(a)(3), (4), 1.15(b), and 8.1(b) where the attorney: (1) failed to timely distribute settlement funds; (2) failed to communicate with a personal injury client; and (3) failed to keep the Office of Disciplinary Counsel informed of changes. In re Siegel, 47 A.3d 523 (Del. 2012).

— Taxes.

Attorney who was delinquent in the payment of the attorney's law practice's federal, state, and local payroll tax obligations violated Law. R. Prof. Conduct 1.15(b), 5.3, 8.4(c) and (d); due to the attorney's prior disciplinary history with delinquent taxes, a public reprimand, 18-month probation and implementation of internal accounting controls were warranted. In re Finestrauss, 32 A.3d 978 (Del. 2011).

Charge that an attorney's failure to pay taxes violated the professional conduct rule regarding the handling of third-party funds was properly withdrawn; it did not apply to an attorney's failure to pay a personal obligation. In re Bria, 86 A.3d 1118 (Del. 2014).

Sanctions.

— Disbarment.

Disbarment is a possible sanction for knowing or reckless misappropriation of firm or client funds. In re Figliola, 652 A.2d 1071 (Del. 1995).

Lawyer who violated numerous professional duties in real estate practice, and caused over $500,000 in damages to clients, was disbarred. In re Spiller, 788 A.2d 114 (Del. 2001).

Court accepted the findings by a panel of the Board on Professional Responsibility that an attorney committed multiple ethical violations by misappropriating fees received for legal services to clients while the attorney was engaged in the private practice of law and failing to disclose the fees during prior disciplinary proceedings; disbarment was warranted. In re Vanderslice, 116 A.3d 1244 (Del. 2015).

— Reprimand.

Attorney committed professional misconduct by failing to comply with the conditions of private probation, by failing to maintain the firm's books and records properly, and by filing false certifications with respect to compliance with that obligation; public reprimand and probation for 3 years with conditions were imposed upon the attorney's immediate reinstatement to the practice of law. In re Woods, 143 A.3d 1223 (Del. 2016).

When respondent violated Law. Prof. Conduct R. 1.5(f), 1.15(a) and (d), 8.4(c) and (d) by failing to properly maintain law firm's books and records for 3 consecutive years, filing inaccurate certificates of compliance for 3 consecutive years, and failing to give flat fee clients proper notice that the fee was refundable if not earned, a public reprimand with a 2-year period of probation was appropriate; this was true, even considering the mitigating factors, given a lawyer's obligation to maintain orderly books and records. In re Castro, 160 A.3d 1134 (Del. 2017).

— Suspension.

A six month and one day suspension from the practice of law was proper punishment for unlawful disbursements from trust accounts. In re Figliola, 652 A.2d 1071 (Del. 1995).

Where a lawyer engaged in a pattern of knowing misconduct over a period of several years by commingling client funds, failing to maintain the lawyer's law practice accounts, failing to pay taxes, falsely representing on certificates of compliance that the lawyer complied with the record-keeping requirements and paid taxes, the lawyer violated Del. Law. R. Prof. Conduct 1.5(f), 1.15(a), (b), (d), 8.4(b), (c), (d); as a result, the lawyer was suspended for 3 years. In re Garrett, 835 A.2d 514 (Del. 2003).

Attorney, who was on probation for previous violations of the Rules of Professional Conduct and who violated Law. Prof. Conduct R. 1.1, 1.2(a), 1.4(a), 1.15(a), 8.1, 8.1(b), 8.4(c), and 8.4(d), and Law. Disc. P. R. 7(c), was suspended from the practice of law in Delaware for 3 years after the Board on Professional Responsibility found that the attorney's problems appeared to be getting worse and included: co-mingling client trust funds; inadequate bookkeeping and safeguarding of client funds; inadequate maintenance of books and records; knowingly making false statements of

material fact to the ODC; false representations in Certificates of Compliance for 3 years; and failure to file corporate tax returns for 3 years. In re Becker, 947 A.2d 1120 (Del. 2008).

Attorney whose misconduct involved false notarizations, failure to safeguard fiduciary funds, failure to pay taxes on real estate transactions, and other misrepresentations committed violations Law. R. Prof. Conduct 1.15(a), (b), and 8.4(a), (c), and (d); based on knowing, rather than negligent, conduct in committing the violations, a 1-year suspension as well as a public reprimand and permanent practice restrictions were deemed appropriate sanctions to impose. In re Member of the Bar of the Supreme Court, 974 A.2d 170 (Del. 2009).

There was substantial evidence to support the factual findings and conclusions of law of the Board on Professional Responsibility regarding an attorney's violations of Law Prof. Conduct R. 1.5(f), 1.15(a) and (b), and 8.4(c), based on the attorney's misappropriation of clients' fees on various occasions, and the attorney's failure to include the typical refund provision regarding unearned fees in the retainer agreements for other clients; a 1-year suspension was warranted. In re Vanderslice, 55 A.3d 322 (Del. 2012).

Attorney who committed numerous ethical violations, including neglecting multiple client matters, making misrepresentations to the court and failing to properly safeguard clients' funds, was suspended for 18 months, based on a determination that the mitigating factors significantly outweighed the aggravating factors. In re Carucci, 132 A.3d 1161 (Del. 2016).