



WHAT ILLINOIS LAWYERS SHOULD KNOW: SUMMARY OF CHANGES TO RPC 1.5 AND 1.15

The following summary highlights critical changes to Rules 1.5 (Fees) and 1.15 (Safekeeping Property) of the Illinois Rules of Professional Conduct. These changes take effect **July 1, 2023**.

Rule 1.5 adds a provision prohibiting non-refundable fees and defines fixed fees, engagement retainers, security retainers, and special purpose retainers (previously identified as advance payment retainers).

Rule 1.15 has been separated into four parts.

AMENDED RULE 1.5 FEES

- (a) adds the type of retainer to the current list of factors that determine the reasonableness of attorney's fees.
- (b) covers communication with clients about fees and remains unchanged.
- (c) specifically **prohibits non-refundable fees** or retainers and any agreement that purports to restrict a client's right to terminate the representation or to obtain a refund of unearned or unreasonable fees.
- (d) in moving the description of fee agreements from Rule 1.15 to Rule 1.5, defines common types of fee agreements.
 - (d)(1) adds a definition of **fixed fees**, reminding lawyers that fixed fees may not be deposited into a client trust account.
 - (d)(2) retains the definition of **contingent fees** from existing Rule 1.5.
 - (d)(3) adds a definition of **engagement or classic retainers**, instructing lawyers that with such retainers, a lawyer is compensated separately for legal services rendered and fees may not be deposited into a client trust account.

- (d)(4) adds a definition of **security retainers** and notes that such retainers must be deposited into a client trust account until the lawyer applies the funds for services rendered.
 - (d)(5) to better describe the purpose of the retainer, identifies and defines the newly labeled **special purpose retainer**, previously introduced as an advance payment retainer in *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007) and described in existing Rule 1.15.
- (e) retains existing Rule 1.5's prohibition on contingent fees in domestic relations and criminal matters.
- (f) retains existing Rule 1.5's guidance as to referral fees between lawyers in different firms.

COMMENTS TO AMENDED RULE 1.5

WHAT'S NEW

[3] relates to fixed fees and reminds lawyers that the fees remain subject to the reasonableness standard and that lawyers are obligated to return the portion that has not been earned.

WHAT HAS MOVED FROM RULE 1.15

- [5] relates to the *Dowling* case and types of retainers.
- [6] relates to the newly labeled special purpose retainers.
- [7] relates to the types of retainers.

WHAT HAS REMAINED FROM RULE 1.5

- [1] relates to the reasonableness of fees.
- [2] relates to clients' understanding of lawyers' fees.
- [4] relates to contingent fees.
- [8] concerns accepting property as payment for legal services.
- [8A] concerns alternate fee arrangements.
- [9] concerns fee agreements that might induce lawyers to improperly curtail services.
- [10] concerns prohibited contingent fees.
- [11] concerns referral fees.
- [12] concerns division of fees after lawyers leave a firm.
- [13] concerns resolution of fee disputes.

AMENDED RULE 1.15 GENERAL DUTIES REGARDING SAFEKEEPING PROPERTY

(a) a new provision that specifically **prohibits a lawyer from using client or third-party funds or property for the lawyer's own purposes without consent.**

- (b) retains existing Rule 1.15(a)'s requirements that a lawyer hold client and third-party funds separate from the lawyer's funds and that a lawyer utilize an IOLTA or client trust account for that purpose.
- (c) retains existing Rule 1.15(b)'s language that lawyers may keep their own funds in client trust accounts for the limited purpose of paying bank service charges while adding that lawyers may do the same to meet a bank's minimum balance requirements.
- (d) describes into which bank accounts (client trust accounts or general accounts) lawyers must deposit fees paid by clients pursuant to various types of fee agreements.
- (e) governs a lawyer's duty to notify and pay out funds received by lawyers on behalf of clients or third parties, consistent with existing Rule 1.15.
- (f) governs a lawyer's duties to segregate funds in the event of a dispute regarding ownership of funds held by the lawyer, consistent with existing Rule 1.15.
- (g) requires withdrawals from client trust accounts be made only by checks payable to a named payees or by electronic transfers and **not by cash, checks made payable to cash, or ATM withdrawals.**

COMMENTS TO AMENDED RULE 1.15

WHAT'S NEW

- [1] states that an attorney's unauthorized use of another's funds is **conversion.**
- [2] explains what kinds of funds are considered funds of clients and third persons and therefore governed by Rule 1.15.
- [5] concerns a lawyer's duties in using **electronic payment methods.**
- [6] concerns a lawyer's duties in determining the reliability of electronic payment methods.
- [7] specifies that the types of fee agreements are now described in Rule 1.5.

WHAT HAS REMAINED FROM RULE 1.15

- [3] concerns a lawyer's duties in holding property of others.
- [4] concerns bank charges on client trust accounts.
- [8] concerns disputes over funds held by lawyers.
- [9] concerns third party claims over funds held by the lawyer.

NEW RULE 1.15A REQUIRED RECORDS

- (a) requires a lawyer to keep client trust account records for a matter for seven years after the termination of a representation, consistent with existing Rule 1.15.
- (b) describes the client trust account records that must be kept and requires lawyers to make appropriate arrangements for the records in the event of the dissolution or sale of a law

practice, consistent with existing Rule 1.15. A new provision requires lawyers to prepare and maintain three-way reconciliation reports.

(c) describes the steps required for a **three-way reconciliation**.

COMMENTS TO NEW RULE 1.15A

WHAT'S NEW

[1] reminds lawyers that compliance with recordkeeping provisions are minimum requirements.

[2] explains three-way reconciliations.

[3] refers lawyers to the Commission's Client Trust Account Handbook for a detailed discussion of three-way reconciliations.

NEW RULE 1.15B TRUST ACCOUNTS AND OVERDRAFT NOTIFICATION

(a) requires all client or third-party funds be placed in an IOLTA account or a non-IOLTA client trust account.

(b) sets out the factors to be considered when determining whether to deposit client or third-party funds in an IOLTA account or a non-IOLTA client trust account.

(c) sets out requirements for bank eligibility to hold IOLTA funds, modified from existing Rule 1.15.

(d) governs how to handle unidentified funds in an IOLTA account, consistent with existing Rule 1.15.

(e) outlines the overdraft notification program, consistent with existing Rule 1.15.

(f) governs a lawyer's disbursement of real estate transaction funds using Real Estate Funds Accounts, consistent with existing Rule 1.15.

COMMENTS TO NEW RULE 1.15B

WHAT'S NEW

[1] concerns use of IOLTA accounts and related determinations, modified from existing Rule 1.15.

[2] concerns interest from IOLTA accounts, modified from existing Rule 1.15.

[3] concerns financial institutions eligible to offer IOLTA accounts.

[4] concerns **unidentified funds** in IOLTA accounts, modified from existing Rule 1.15.

[5] concerns instructions relating to unidentified funds in IOLTA accounts, modified from existing Rule 1.15.

WHAT HAS REMAINED FROM RULE 1.15

[6] concerns overdrafts in IOLTA accounts.

[7] concerns Real Estate Funds Accounts.

NEW RULE 1.15C DEFINITIONS FOR RULES 1.15, 1.15A, AND 1.15B

(a) - (i) define terms found in Rules 1.15, 1.15A, and 1.15B, consistent with existing Rule 1.15.

COMMENT TO NEW RULE 1.15C

[1] concerns the definitions set out in Rule 1.15C, including the meaning of “funds,” “promptly payable,” and “unidentified funds.”