

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendments to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement and Rule 1.15 of the Pennsylvania Rules of Professional Conduct; No. 41 Disciplinary Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 5th day of April, 2005, Rule 1.15 of the Pennsylvania Rules of Professional Conduct is amended to read as set forth in Annex A hereto and Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement is amended to read as set forth in Annex B hereto.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration, shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall govern matters thereafter commenced and, insofar as just and practicable, matters then pending.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

#### CLIENT-LAWYER RELATIONSHIP

##### 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] client-lawyer relationship** separate from the lawyer's own property. **[Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other]** Such property shall be identified **[as such]** and appropriately safeguarded. Complete records of **[such account funds and other property]** the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the **[representation] client-lawyer relationship or after distribution or disposition of the property, whichever is later.**

(b) Upon receiving **[funds or other property]** in which a client or third person has an interest **[property of a client or third person in connection**

**with a client-lawyer relationship,** 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 or third person, 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] connection with a client-lawyer relationship** a lawyer is in possession of property in which **[both the lawyer and another person] two or more persons, one of whom may be the lawyer,** claim an interest, the property shall be kept separate by the lawyer until **[there is an accounting and severance of their interests] the dispute is resolved. [If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.]** The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(d) **[Notwithstanding paragraphs (a), (b) and (c), and except as provided below in paragraph (e), a lawyer shall place all funds of a client or of a third person in an interest bearing account. All qualified funds received by the lawyer shall be placed in an interest On Lawyer Trust Account in a depository institution approved by the Supreme Court of Pennsylvania. All other funds of a client or a third person received by the lawyer shall be placed in an interest bearing account for the benefit of the client or third person or in an other investment vehicle specifically agreed upon by the lawyer and the client or third party.]** In those parts of this Rule dealing with funds of clients or third persons which the lawyer receives in connection with a client-lawyer relationship, excluding funds which the lawyer receives while acting as fiduciary for an estate, trust, guardianship or conservatorship, the following definitions are applicable:

(1) **Trust Account** means an interest-bearing account in a financial institution, as defined in Rule of Disciplinary Enforcement 221, in which the lawyer deposits such funds.

(2) **Qualified funds [are monies received by a lawyer in a fiduciary capacity that, in the good faith judgment of the lawyer,] means such funds when they are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient interest income will not be generated to justify the expense of administering a segregated account.**

**[(2) Depository institutions are financial institutions approved by the Supreme Court of Pennsylvania pursuant to Rule 221 of the Pennsylvania Rules of Disciplinary Enforcement.]**

(3) **Nonqualified Funds** means all other such funds.

(4) An Interest On Lawyer Trust Account (IOLTA Account) is an unsegregated **[interest-bearing deposit**

account with a depository institution ] Trust Account for the deposit of [ qualified funds ] Qualified Funds by a lawyer.

(5) The IOLTA Board means the Pennsylvania Interest on Lawyers Trust Account Board.

(e) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying bank services charges on that account, and only in an amount necessary for that purpose. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner. At all times while a lawyer holds funds of a client or third person in connection with a client-lawyer relationship, the lawyer shall also maintain another account that is not used to hold such funds.

(f) All Nonqualified Funds shall be placed in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

(g) All Qualified Funds shall be placed in an IOLTA Account. The rate of interest payable on an IOLTA Account shall not be less than the highest rate or dividend generally available from the financial institution to its non-IOLTA Account customers when the IOLTA Account meets or exceeds the same minimum balance and other account eligibility qualifications applicable to those other accounts. In no event shall the rate of interest payable on an IOLTA Account be less than the rate paid by the [ depository ] financial institution on negotiable order of withdrawal accounts (NOW) or super negotiable order of withdrawal accounts. An account shall not be considered an IOLTA Account unless the [ depository ] financial institution at which the account is maintained shall:

[ (i) ] (1) Remit at least quarterly any interest earned on the account to the IOLTA Board [ (as hereinafter defined) ].

[ (ii) ] (2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, [ and ] the amount of interest remitted from the account and the average daily balance, if available.

[ (iii) ] Transmit to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, and the amount of interest remitted from the account.

(e) [ (h) ] A lawyer shall be exempt from the [ provisions of paragraph (d) ] requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account. Exemptions shall be granted if: [ (i) ] (1) the nature of the lawyer's practice does not require the routine maintenance of a [ trust account ] Trust Account in Pennsylvania; [ (ii) ] (2)

compliance with this paragraph [ (d) ] would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest [ depository ] financial institution [ which is described in paragraph (d)(2) ], or on other compelling and necessitous factors; or [ (iii) ] (3) the lawyer's historical annual [ trust account ] Trust Account experience, based on information from the [ depository ] financial institution in which the lawyer deposits [ trust ] funds, demonstrates [ that ] the service charges on the account would significantly and routinely exceed any interest generated.

[ (f) ] (i) A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer's judgment in good faith that the monies deposited were [ qualified funds ] Qualified Funds.

[ (g) ] (j) There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board [ (herein called the IOLTA Board) ], which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appointments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court. Additionally, upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA funds for the purpose set forth in this Rule. The IOLTA Board shall comply with the following:

\* \* \* \* \*

(2) Disbursement and allocation of IOLTA Funds shall be subject to the prior approval of the Supreme Court [ , thus the ]. The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program. Additionally, a copy of the IOLTA Board's proposed annual budget [ will ] shall be provided to the Court, designating the uses to which IOLTA Funds are recommended.

[ (h) ] (k) \* \* \*

\* \* \* \* \*

[ (i) ] (l) \* \* \*

Comment:

(1) A lawyer should hold property of others with the care required of a professional fiduciary. The obligations of a lawyer under this Rule apply when the lawyer has come into possession of property of clients or third persons because the lawyer is acting or has acted as a lawyer in a client-lawyer relationship with some person. 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** ], including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more [ **trust accounts** ] **Trust Accounts**. [ **Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.** ] The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Whenever a lawyer holds funds of a client or third person, the lawyer must maintain at least two accounts: one in which those funds are held and another in which the lawyer's own funds may be held. A lawyer should maintain on a current basis books and records in accordance with sound accounting practices consistently applied and comply with any recordkeeping rules established by law or court order.

(2) The following books and records shall be maintained for each Trust Account:

(i) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(ii) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(iii) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(3) The records required by this Rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(4) While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (e) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding that part of the funds which are the lawyer's.

(5) 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** ] The lawyer is not required to remit [ **the portion from which the fee is to be paid** ] to the client funds that the lawyer reasonably believes represent fees owed. 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** ] must be kept in a Trust Account 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.

[ **Third** ] (6) Paragraph (c) also recognizes that third parties [ **, such as a client's creditors,** ] may have [ **just** ] lawful claims against specific funds or other property in a lawyer's custody such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client [ **, and ac-**

**cordingly, may refuse to surrender the property to the client. However, a** ]. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[ **The obligation of a lawyer under this Rule are independent of those arising from activity other than rendering legal services.** ] (7) Other applicable law may impose pertinent obligations upon a lawyer independent of any obligations arising from this Rule. For example, a lawyer who serves only 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 and is not governed by this Rule. A lawyer who receives funds while serving as an executor or trustee remains subject to the formal accounting procedures and other supervision of the Orphans Court; when such funds are nominal in amount or reasonably expected to be held for such a short period that sufficient interest will not be generated to justify maintaining a segregated account such funds may, in the discretion of the lawyer, be deposited into the IOLTA Account of the lawyer even though such deposit is not required.

[ **A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.** ] (8) A lawyer must participate in the Pennsylvania Lawyers Fund for Client Security. It is a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.

(9) Paragraphs (g) through (l) provide for the Interest on Lawyer Trust Account (IOLTA) program, and the definitions in paragraph (d) distinguish two types of funds of clients and third persons held by a lawyer: Qualified Funds, which must be placed in an IOLTA account, and Nonqualified Funds, which are to be placed in an interest bearing account unless the client or third person specifically agrees to another investment vehicle for the benefit of the client or third person. There are further instructions in Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement and in the Regulations of the Interest on Lawyers Trust Account Board, 204 Pa. Code, § 81.1 et seq., which are referred to as the IOLTA Regulations.

#### Annex B

### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

#### Subchapter B. MISCONDUCT

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

(a) [ **For purposes of this rule, a fiduciary account of an attorney is:**

(1) an IOLTA Account as defined in Rule 1.15(d)(3) of the Pennsylvania Rules of Professional Conduct; or

(2) any other account maintained in a financial institution in which or with respect to which an attorney holds funds:

(i) of a client;

(ii) in a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee or an express trust, guardian or conservator; or

(iii) as an escrow agent or other fiduciary, having been so selected as a result of a client-attorney relationship. ]

For purposes of this rule, a Trust Account of an attorney is an account in which an attorney, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship.

(b) An attorney shall maintain a [ fiduciary account ] Trust Account with respect to his/her practice in this Commonwealth only in a financial institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for financial institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of approved financial institutions.

(c) A financial institution shall be approved as a depository for [ fiduciary accounts ] Trust Accounts of attorneys if it shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against [ an account described in paragraph (a) above ] a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

\* \* \* \* \*

(d) For purposes of this Rule, [ an account ] a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement [ of the propriety ] of the practice of drawing checks against uncollected funds.

\* \* \* \* \*

(f) The responsibility for identifying an account as a [ fiduciary account ] Trust Account shall be that of the attorney in whose name the account is held.

(g) The following books and records shall be maintained for each Trust Account:

(1) bank statements and check registers (which shall include the payee, date, amount and the client matter involved);

(2) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions;

(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

(h) The records required by this rule may be maintained in electronic or other form if they can be retrieved in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(i) The records required by this rule may be subject to subpoena in connection with an investigation or hearing pursuant to these rules. Failure to produce such records may result in the initiation of proceedings pursuant to Rule 208(f) (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

(j) For purposes of this rule, funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the financial institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § [ 4107(b) ] 4108(b) (relating to items [ of ] or deposits received after cutoff hour).

[ (h) ] (k) For purposes of this rule, a check or draft against [ an escrow account ] a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

[ (i) When ] (l) No report need be made when the financial institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored [ , no report need be made ]. This provision shall not be deemed an endorsement [ of the propriety ] of the practice of drawing checks against uncollected funds.

[ (j) ] (m) \* \* \*

[ (k) ] (n) \* \* \*

[ (l) ] (o) \* \* \*

[ (m) ] (p) \* \* \*

[ (n) ] (q) \* \* \*

[ (o) ] (r) \* \* \*

[Pa.B. Doc. No. 05-757. Filed for public inspection April 22, 2005, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## CUMBERLAND COUNTY

### Arbitration Rules; Civil Term; Civil 96-1335

#### Order of Court

*And Now*, this 30th day of March, 2005, and effective March 30, 2005, or thirty (30) days after publication in the *Pennsylvania Bulletin*, Cumberland County Local Rule of Court 1301.1 regarding Arbitration Rules is amended as follows:

All civil cases which are at issue in which the total amount in controversy is **Thirty Five Thousand Dollars (\$35,000)** or less, exclusive of interest and costs, except those cases involving the title to real estate, shall be submitted for hearing and award to three members of the Bar of Cumberland County to be designated as a Board of Arbitrators.

**Note:** These rules are adopted pursuant to the authority of sec. 7361 of the Judicial Code of July 9, 1976, 42 Pa.C.S. sec. 7361. (Rules 450 et seq. for requirements of admission and membership in the Bar of Cumberland County).

Formerly Local Rule 401-1.

Adopted May 15, 1981; effective May 15, 1981;

Amended December 21, 1992; effective February 1, 1993;

Amended March 30, 2005; effective March 30, 2005.

Pursuant to Pa. R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order

to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau, for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, one (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the *Cumberland Law Journal*.

*By the Court*

GEORGE E. HOFFER,  
*President Judge*

[Pa.B. Doc. No. 05-758. Filed for public inspection April 22, 2005, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania issued April 6, 2005, Brian P. Raney is suspended from the practice of law for a period of five years, effective May 6, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 05-759. Filed for public inspection April 22, 2005, 9:00 a.m.]