Order

Michigan Supreme Court
Lansing, Michigan

June 30, 2026

ADM File No. 2022-19

Proposed Amendments of Rules 1.5, 1.15, and 1.15A, and Proposed Additions of Rules 1.15B and 1.15C of the Michigan Rules of Professional Conduct

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The Court, having given an opportunity for comment in writing and at public hearings on two proposals, again seeks public comment regarding the proposed amendments of Rules 1.15 and 1.15A and proposed additions of Rules 1.15B and 1.15C of the Michigan Rules of Professional Conduct regarding IOLTA accounts. During the initial comment period, the Court received comments on the original proposal that would modernize the rules, address gaps in the existing rules, and clarify attorneys' ethical duties related to safekeeping client or third-person property and managing trust accounts. During the second comment period, the Court was interested in receiving additional comments on the revised proposal, especially regarding the proposed revision of subrule (c) of Rule 1.15 of the Rules of Professional Conduct as well as the proposed comment that accompanies that subrule, both of which would address legal fees and expenses that have been paid in advance of services rendered. Now, the Court requests additional comments on this third revised proposal that would further revise proposed MRPC 1.15(c) and its comment and would move much of that provision into MRPC 1.5 and its comment.

On order of the Court, this is to advise that the Court is considering amendments of Rules 1.5, 1.15, and 1.15A, and proposed additions of Rules 1.15B and 1.15C of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will also be considered at a public hearing. The notices and agendas for each public hearing are posted on the Public Administrative Hearings page.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 1.5 Fees.

(a)-(e) [Unchanged.]

(f) A lawyer and a client may agree in writing to a reasonable advance fee. For purposes of these rules, an "advance fee" is a fee paid in advance for services to be rendered by the lawyer or expenses that may be incurred. An advance fee may be earned on a flat or hourly basis. For the proper treatment and handling of an advance fee, see MRPC 1.15.

(g) A lawyer and a client may agree in writing to a reasonable flat fee. For purposes of these rules, a "flat fee" is one that embraces all services that a lawyer is to perform, whether the services are relatively simple or complex. For the proper treatment and handling of a flat fee, see MRPC 1.15.

(h) A lawyer and a client may agree in writing to a reasonable classic retainer fee. For purposes of these rules, a "classic retainer fee" is a fee, regardless of the name used in the agreement, that is paid to ensure a lawyer is available to perform legal services when needed by the client. The fees for performance of such legal services must be billed separately. For the proper treatment and handling of a classic retainer fee, see MRPC 1.15.

Comment:

[Paragraphs 1-4 unchanged.]

Advance Fees. Advance fees are deposits by a client with a lawyer meant to secure payment for contemplated legal services. The proper handling of such fees paid in advance is discussed in MRPC 1.15(c).

Flat or Fixed Fees. A lawyer and a client are permitted to engage in flat fee arrangements, which is common in certain types of engagements such as criminal defense and estate planning. When paid in advance, the flat fees contemplated by subrule (g) are a type of advance fee that are sometimes referred to as "fixed fees" or "minimum fees." The name is less important than the nature of these fees – they are paid for certain services regardless of the number of hours the attorney spends performing the legal services. However, the fee or a portion of the fee may be earned in increments such as the passage of time or following completion of certain tasks. The fee agreement must clearly state at what points the fee is earned and how much is earned at each point. The fee can also be earned all at once when an agreed-upon deliverable is provided to the client. Examples of such deliverables include a will or trust, a power of attorney, or a contract. Finally, MRPC 1.15(c) makes clear that the lawyer is entitled to any portion of the fee that has been earned. Once the engagement is complete, unearned portions must be returned to the client.

Classic Retainer Fees. Classic retainer fees are not earned by the provision of specific legal services. Rather, such fees are paid to secure a lawyer's promise to undertake a certain representation, which prohibits the lawyer from engagements in conflict with the client, and may be earned whether or not the client calls upon the attorney for such representation. The classic retainer fees contemplated by subrule (h) are used less frequently than other fee types and are sometimes referred to as "general retainer," "traditional retainer," or "engagement" fees. However, the name of the fee is not important in determining whether it is a classic retainer fee; rather, it must be clear from the agreement that the fee is not for any specific services to be performed by the lawyer but instead for the lawyer's *availability* to perform legal services when called upon by the client to do so. The handling of classic retainer payments is addressed in MRPC 1.15.

[Paragraph 5 renumbered as paragraph 8 but otherwise unchanged.]

Rule 1.15 Safekeeping Property.

~~(a) Definitions.~~

~~(1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the account.~~

~~(2) An "eligible institution" for IOLTA accounts is a bank, credit union, or savings and loan association authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Michigan. The eligible institution must pay no less on an IOLTA account than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution's standard practice, but institutions may elect to pay a higher interest or dividend rate and may elect to waive any fees on IOLTA accounts.~~

~~(3) "IOLTA account" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot~~

~~earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.~~

~~(4) "Non-IOLTA account" refers to an interest- or dividend-bearing account from which funds may be withdrawn upon request as soon as permitted by law in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government. Such an account shall be established as:~~

~~(A) a separate client trust account for the particular client or matter on which the net interest or dividend will be paid to the client or third person, or~~

~~(B) a pooled client trust account with subaccounting by the bank or savings and loan association or by the lawyer, which will provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.~~

~~(5) "Lawyer" includes a law firm or other organization with which a lawyer is professionally associated.~~

~~(b) A lawyer shall:~~

~~(1) promptly notify the client or third person when funds or property in which a client or third person has an interest is received;~~

~~(2) preserve complete records of such account funds and other property for a period of five years after termination of the representation; and~~

~~(3) promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property.~~

~~(c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it 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.~~

(a~~d~~) A lawyer must~~shall~~ hold property and funds of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds. Client funds include unearned fees. All client or third-person funds must~~shall~~ be kept in a client trust account in accordance with MRPC

1.15A~~deposited in an IOLTA or non-IOLTA account~~. Other property must~~shall~~ be identified as such and appropriately safeguarded. Complete records of such account property and funds must be kept by the lawyer and must be preserved in accordance with MRPC 1.15B.

~~(c) In determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, a lawyer shall consider the following factors:~~

~~(1) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of (a) the amount of the funds to be deposited; (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and (c) the rates of interest or yield at financial institutions where the funds are to be deposited;~~

~~(2) the cost of establishing and administering non-IOLTA accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;~~

~~(3) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and~~

~~(4) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.~~

(b~~f~~) Except as otherwise provided in these rules, only client or third-person funds may be held in a trust account. A lawyer may deposit or retain the lawyer's own funds in a client trust account for the sole purposes of:

(1) opening an account;

(2) maintaining a minimum balance to prevent account closure; or

(3) paying or avoiding a financial institution's~~only in an amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of~~ service charges on that account~~or fees~~.

The lawyer must only deposit or retain their own funds under this subrule in an amount reasonably necessary for each allowable purpose.

(c) A lawyer must deposit into a client trust account unearned legal fees and funds for expenses that have been paid in advance of services rendered or the incurrence of expenses, which can only be withdrawn by the lawyer as funds are earned or expenses incurred. A client and lawyer may agree in writing that portions of a flat

fee are earned in reasonable increments or when the lawyer provides the client with an agreed-upon deliverable. Fees earned by the lawyer may be withdrawn from the client trust account immediately if the client has agreed to immediate withdrawal. Otherwise, such funds must be withdrawn within a reasonable time after the fee is earned or the expense is incurred, and

(1) the client has been billed, and

(2) a reasonable time to dispute the bill has passed, or

(3) the client has agreed to the payment of the bill from their funds in the client trust account.

(d) Upon receiving property or funds in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by lawful agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer must promptly render a full accounting regarding such property or funds.

(e) When in the course of representation, a lawyer is in possession of property or funds in which two or more people, one of whom may be the lawyer, claim interests, the property or funds must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly distribute all portions of the property or funds of which the interests are not in dispute.

(f) A lawyer must not pay operating or personal expenses directly from a client trust account.

~~(g) Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred.~~

~~(h) No interest or dividends from the client trust account shall be available to the lawyer.~~

~~(i) The lawyer shall direct the eligible institution to:~~

~~(1) remit the interest and dividends from an IOLTA account, less allowable reasonable fees, if any, to the Michigan State Bar Foundation at least quarterly;~~

~~(2) transmit with each remittance a report that shall identify each lawyer for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any,~~

~~and the average account balance for the period in which the report is made; and~~

~~(3) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors~~.

~~(j) A lawyer's good-faith decision regarding the deposit or holding of such funds in an IOLTA account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a non-IOLTA account.~~

Comment:

Fiduciary Role. The obligations of a lawyer under this rule apply only when the lawyer is rendering legal services. For example, a lawyer who serves only as an escrow agent in a transaction, without rendering legal services, is governed by the applicable law and is not governed by this rule.

Additionally, separate escrow or fiduciary accounts may be warranted when acting as a fiduciary in a business transaction or similar role. Attorneys at times may be entrusted with funds to be safeguarded although the transaction may not relate to a lawyer and client relationship. In those cases, attorneys may be subject to other rules, such as MCR 9.104 and MRPC 8.4(b). While it is appropriate to place such funds in an escrow or fiduciary account, and not a client trust account, the funds must be safeguarded and not commingled with the attorney's funds nor misappropriated.

Fiduciary Obligation. A lawyer must hold property or funds of others with the care required of a professional fiduciary.

Safekeeping Digital Property. When a lawyer holds physical or digital property, the lawyer's obligation to safeguard this property is the same as any other property entrusted to the lawyer. Where the digital property is stored on a tangible medium within the lawyer's control, it is the tangible medium that must be safeguarded. When a lawyer possesses the means to access digital property, the obligation to safeguard the property extends only to the means of access, rather than to the digital property that may be accessed.

Time for Withdrawing Earned Fees. Seven days is presumed to be a reasonable time for a client to dispute their bill under subrule (c). A different timeframe may be reasonable if good cause exists.

To avoid commingling of funds, withdrawal of earned fees from the trust account within a period of 30 days after the client has been billed is presumed to be a reasonable time in which the funds must be withdrawn under subrule (c). Withdrawal after 30 days may be reasonable if the client disputes the related bill or other good cause exists.

Disputed Property or Funds. A third person, such as a client's creditors, may have a claim against property or funds being held by the lawyer. A lawyer may have a duty under applicable law to protect such a third-person claim against wrongful interference by the client, and accordingly may refuse to surrender the property or funds as directed by the client. However, a lawyer should not unilaterally decide the dispute between the client and the third person. The disputed portion of the funds must be held in the trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or filing an appropriate pleading or motion with the appropriate court. The undisputed portion of the property or funds must be promptly distributed.

The lawyer should keep separate all property held in safekeeping for which the ownership is in dispute and suggest means for prompt resolution of the dispute.

Advance Fees. An "advance fee" is a fee paid in advance for services to be rendered by the lawyer. An advance fee may be flat or hourly. "A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d)." Comment, MRPC 1.5. Similarly, a lawyer may require a deposit for anticipated expenses to be paid in advance. Fees and expenses paid in advance are refundable to the extent they are not earned or incurred.

Flat or Fixed Fees. When paid before services have been performed, the flat fees contemplated by MRPC 1.5(g) are a type of advance fee that must be deposited in a trust account. Flat fees are sometimes referred to as "fixed fees" or "minimum fees." The name is less important than the nature of these fees – they are paid for certain services regardless of the number of hours the attorney spends performing the legal services. However, the fee or a portion of the fee may be earned in increments such as the passage of time or following completion of certain tasks. The fee agreement must clearly state at what points the fee is earned and how much is earned at each point. The fee can also be earned all at once when an agreed-upon deliverable is provided to the client. Examples of such deliverables include a will or trust, a power of attorney, or a contract. Finally, subrule (c) makes clear that the lawyer is entitled to any portion of the fee that has been earned. Once the engagement is complete, unearned portions must be returned to the client.

Classic or General Retainers. These fees are traditionally considered earned upon a lawyer's agreement to represent a client in a certain matter or matters for a certain period. So long as memorialized in a written agreement, a lawyer and a client are permitted to agree to payment of a classic retainer fee that is considered earned upon receipt and thus may be deposited into the lawyer's operating account rather than a trust account. Classic retainer fees are distinct and different from fees paid in advance for services. While a fee agreement may contain provisions regarding both types of fees, they must not be conflated. Provisions regarding advance fees must make it clear that the funds not earned will be returned to the client. Provisions regarding a classic retainer must, as noted, make it clear to the client that payment for services will not be deducted from the so-called classic or general retainer. In other words, an attempt to make the classic retainer earned on receipt

and payment for contemplated services is an improper attempt to render an advance fee nonrefundable. Such an attempted combination renders the entire sum paid an advance which is refundable to the extent not earned by the rendering of legal services regardless of terms to the contrary. Like all fees, classic retainer fees must be reasonable. MRPC 1.5(a).

Inability to Locate Rightful Owner. If the lawyer is unable to locate the rightful owner of property held for safekeeping or funds held in the lawyer's trust account after making reasonable efforts to locate the owner, the lawyer must comply with the Michigan Uniform Unclaimed Property Act, MCL 567.221, *et seq.* It is prudent to keep records of the efforts to locate the owner.

Payment of Operating and Personal Expenses. A lawyer must pay operating and personal expenses from an appropriate business or personal account. A lawyer must avoid using a client trust account as a law firm operating account for the purpose of paying payroll, rent, and the like. Similarly, a lawyer must avoid using a client trust account for direct payment of personal expenses. Rather, a lawyer must promptly transfer any earned fees to an appropriate account for payment of such expenses.

~~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 a client or a third person should be kept separate from the lawyer's business and personal property and, if funds, should be kept in one or more trust accounts. Separate trust accounts may be warranted when administering estate funds or acting in similar fiduciary capacities.~~

~~Lawyers often receive from third persons funds 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. A third person, such as a client's creditors, may have a just claim against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such a third party claim 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 person.~~

~~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.~~

Rule 1.15A Lawyer Trust Accounts ~~Overdraft Notification~~.

(a) Type of Account. All client or third-person funds in connection with a representation must be deposited into a client trust account, which is either an Interest on Lawyer Trust Account (IOLTA) or non-IOLTA.

(1) "IOLTA" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, held at an eligible and approved financial institution, from which funds may be withdrawn upon request as soon as permitted by law. Any dividends or interest earned by an IOLTA must be paid to the Michigan State Bar Foundation. An IOLTA must only hold client or third-person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.

(2) "Non-IOLTA" refers to an interest- or dividend-bearing account held at an approved financial institution, from which funds may be withdrawn upon request as soon as permitted by law. A non-IOLTA must be:

(i) a separate client trust account for the particular client or matter on which the net interest or dividend will be paid to the client or third person, or

(ii) a pooled client trust account with subaccounting by the financial institution or by the lawyer, which provides for computation of net interest or dividend earned by each client or third person's funds and the payment of interest or dividend to the client or third person.

(b) In determining whether client or third-person funds should be deposited in an IOLTA or a non-IOLTA, a lawyer must consider the following factors:

(1) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of

(i) the amount of the funds to be deposited;

(ii) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and

(iii) the rates of interest or yield at financial institutions where the funds are to be deposited;

(2) the cost of establishing and administering non-IOLTAs for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;

(3) the capability of the financial institution or lawyer to calculate and pay income to individual clients or third persons; and

(4) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.

(c) After considering the factors in subrule (b), a lawyer's good-faith decision regarding the deposit or holding of such funds in an IOLTA or non-IOLTA is not reviewable by a disciplinary body.

(d) A lawyer must not receive interest or dividends from any client trust account.

~~(a) Scope. Lawyers who practice law in this jurisdiction shall deposit all funds held in trust in accordance with Rule 1.15. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor or otherwise.~~

~~(1) "Lawyer" includes a law firm or other organization with which a lawyer is professionally associated.~~

~~(2) For any trust account which is an IOLTA account pursuant to Rule 1.15, the "Notice to Eligible Financial Institution" shall constitute notice to the depository institution that such account is subject to this rule. Lawyers shall clearly identify any other accounts in which funds are held in trust as "trust" or "escrow" accounts, and lawyers must inform the depository institution in writing that such other accounts are trust accounts for the purposes of this rule.~~

~~(b) Overdraft Notification Agreement Required. In addition to meeting the requirements of Rule 1.15, each bank, credit union, savings and loan association, savings bank, or open-end investment company registered with the Securities and Exchange Commission (hereinafter "financial institution") referred to in Rule 1.15 must be approved by the State Bar of Michigan in order to serve as a depository for lawyer trust accounts. To apply for approval, financial institutions must file with the State Bar of Michigan a signed agreement, in a form provided by the State Bar of Michigan, that it will submit the reports required in paragraph (d) of this rule to the Grievance Administrator and the trust account holder when any properly payable instrument is presented against a lawyer trust account containing insufficient funds or when any other debit to such account would create a negative balance in the account, whether or not the instrument or other debit is honored and irrespective of any overdraft protection or other similar privileges that may attach to such account. The agreement shall apply to the financial institution for all of its locations in Michigan and cannot be canceled except on 120 days notice in writing to the State Bar of Michigan. Upon notice of cancellation or termination of the agreement, the~~

~~financial institution must notify all holders of trust accounts subject to the provisions of this rule at least 90 days before termination of approved status that the financial institution will no longer be approved to hold such trust accounts.~~

~~(c) The State Bar of Michigan shall establish guidelines regarding the process of approving and terminating "approved status" for financial institutions, and for other operational procedures to effectuate this rule in consultation with the Grievance Administrator. The State Bar of Michigan shall periodically publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that has not been so approved. Approved status under this rule does not substitute for "eligible financial institution" status under Rule 1.15.~~

~~(d) Overdraft Reports. The overdraft notification agreement must provide that all reports made by the financial institution contain the following information in a form acceptable to the State Bar of Michigan:~~

~~(1) The identity of the financial institution~~

~~(2) The identity of the account holder~~

~~(3) The account number~~

~~(4) Information identifying the transaction item~~

~~(5) The amount and date of the overdraft and either the amount of the returned instrument or other dishonored debit to the account and the date returned or dishonored, or the date of presentation for payment and the date paid.~~

~~The financial institution must provide the information required by the notification agreement within five banking days after the date the item was paid or returned unpaid.~~

~~(e) Costs. The overdraft notification agreement must provide that a financial institution is not prohibited from charging the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest or dividends earned on trust accounts, including earnings on IOLTA accounts payable to the Michigan State Bar Foundation under Rule 1.15. Such costs, if charged, shall not be borne by clients.~~

~~(f) Notification by Lawyers. Every lawyer who receives notification that any instrument presented against the trust account was presented against insufficient funds or that any other debit to such account would create a negative balance in the account, whether or not the instrument or other debit was honored, shall, upon receipt of a request for investigation from the Grievance Administrator, provide the~~

~~Grievance Administrator, in writing, within 21 days after issuance of such request, a full and fair explanation of the cause of the overdraft and how it was corrected.~~

~~(g) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the requirements mandated by this rule and shall be deemed to have consented under applicable privacy laws, including but not limited to those of the Gramm-Leach-Bliley Act, 15 USC 6801, to the reporting of information required by this rule.~~

Comment:

Review of Accounts. A lawyer must review the IOLTA at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively into a non-IOLTA.

Electronic Transfers. A lawyer may accept the electronic transfer of funds for an advance payment, for services rendered, or for the safekeeping of client or third-person funds if appropriate safeguards to protect confidentiality and client property are employed.

Approved Financial Institution. An "approved financial institution" is a bank, credit union, or savings and loan association authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government or an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Michigan. The State Bar of Michigan is authorized to approve financial institutions that have agreed to the Overdraft Notification Agreement and requirements of MRPC 1.15C. The State Bar of Michigan has established guidelines regarding the process of approving and terminating "approved status" for financial institutions, and for other operational procedures to effectuate this rule in consultation with the Grievance Administrator. The State Bar of Michigan must periodically publish a list of approved financial institutions. A lawyer may not maintain a trust account at a financial institution that has not been approved by the State Bar of Michigan.

Eligible Institution. An "eligible institution" is an approved financial institution that is deemed eligible to hold IOLTAs by the Michigan State Bar Foundation. Eligibility is determined based upon factors, including reporting requirements, remittance requirements, and comparable rate requirements, set forth in the Michigan State Bar Foundation IOLTA Handbook, as adopted by the Michigan Supreme Court. The financial institution may charge reasonable fees on IOLTAs, including per transaction charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA administrative or maintenance fee. Any allowable reasonable fees are deducted from the interest or dividends earned on each IOLTA. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter must not be taken from interest or dividends earned on other IOLTA or from the principal of the

account. The lawyer is responsible for all other operational costs to maintain an IOLTA, including but not limited to, check orders, wire transfers, and NSF charges. These additional operational costs must not be charged to the client.

The Michigan State Bar Foundation must periodically publish a list of eligible institutions. A lawyer may not maintain an IOLTA at a financial institution that is not eligible.

[NEW] Rule 1.15B Lawyer Trust Account Records

(a) A lawyer has a duty to maintain ongoing and complete records of client trust accounts, for a period of five years after termination of representation, including

(1) for each client trust account, a record of deposits and withdrawals from the account specifically identifying the date, source, and description of each item deposited, as well as the date, the payee, and purpose of each disbursement.

(2) for each separate client or third person whose funds are being held in a client trust account,

(i) the source of all funds deposited;

(ii) the date of each deposit;

(iii) the names of all persons for whom the funds are or were held;

(iv) the amount of such funds;

(v) the dates, descriptions, and amounts of charges or withdrawals; and

(vi) the names of all persons or entities to whom funds were disbursed.

(3) copies of all documentation provided to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of client files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(4) where applicable, all client trust account checkbook registers, check stubs, account statements, records of deposit, electronic transfer documents, and checks or other records of debits.

(5) all written engagement or fee agreements with clients.

(6) all bills rendered to clients for legal fees and expenses.

(7) appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

(b) Records required by this rule may be maintained by electronic, photographic, or other media provided that copies can be produced and the records are readily accessible to the lawyer.

Comment:

Documentation. As used in subrule (a)(3), "documentation" includes but is not limited to accounting updates, bills, and invoices.

[NEW] Rule 1.15C Trust Account Overdraft Notification

(a) Scope. Lawyers who practice law in this jurisdiction must deposit all funds held in connection with a representation in trust, IOLTA or non-IOLTA, in accordance with Rules 1.15 and 1.15A.

(b) Requirements. Lawyers must only hold client trust accounts in accordance with MRPC 1.15A and comply with the following:

(1) Complete and submit to the financial institution the applicable notice to financial institution form drafted and published by the Michigan State Bar Foundation or State Bar of Michigan, which constitutes notice to the financial institution that the account is subject to this rule.

(2) Clearly identify any accounts in which funds are held in trust as "escrow account," "IOLTA," or "non-IOLTA" and include within the name of the account the name of the lawyer or firm account holder.

(c) Overdraft Reports. To be an approved financial institution, a financial institution must submit to the State Bar of Michigan an overdraft notification agreement. The overdraft notification agreement must provide that all reports made by the financial institution contain the following information in a form acceptable to the Attorney Grievance Commission:

(1) the identity of the financial institution;

(2) the identity of the account holder;

(3) the account number;

(4) information identifying the transaction item; and

(5) the amount and date of the overdraft and either the amount of the returned instrument or other dishonored debit to the account and the date returned or dishonored, or the date of presentation for payment and the date paid. The financial institution must provide the information required by the notification

agreement within five business days after the date the item was paid or returned unpaid.

(d) Costs. The overdraft notification agreement must provide that a financial institution may charge the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest or dividends earned on trust accounts, including earnings on IOLTAs payable to the Michigan State Bar Foundation under Rule 1.15A. Such costs, if charged, must not be borne by clients.

(e) Notification by Lawyers. Every lawyer who receives notification that any instrument presented against the trust account was presented against insufficient funds or that any other debit to such account would create a negative balance in the account (overdraft notification), whether or not the instrument or other debit was honored, must, upon receipt of a request for investigation from the Grievance Administrator, comply with MCR 9.113.

(f) Every lawyer practicing or admitted to practice in this jurisdiction will be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

Staff Comment (ADM File No. 2022-19): The proposed amendments of MRPC 1.5, 1.15, and 1.15A, and proposed additions of MRPC 1.15B and 1.15C reflect a third-revised proposal that would amend the rules governing IOLTA accounts to: modernize the fee and IOLTA rules, address gaps in the existing rules, and clarify attorneys' ethical duties related to safekeeping client or third-person property and managing trust accounts. Of particular note, MRPC 1.5 would authorize lawyers to agree in writing to receiving advance fees, including flat fees and classic retainer fees, subject to certain restrictions. MRPC 1.15 addresses how to handle and treat those funds for purposes of IOLTAs.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be submitted by October 1, 2026 by clicking on the "Comment on this Proposal" link under this proposal on the Court's Proposed & Adopted Orders on Administrative Matters page. You may also submit a comment in writing at P.O. Box 30052, Lansing, MI 48909 or via email at ADMcomment@courts.mi.gov. When submitting a comment, please refer to ADM File No. 2022-19. Your comments and the comments of others will be posted under the chapter affected by this proposal.

ZAHRA, J. (*concurring*). Today, the Court republishes for comment a third revised proposal for the rules relating to attorney-client fee agreements. These proposed changes will no longer allow lawyers and clients to enter into unambiguous written agreements that state a fee is earned and nonrefundable when paid. I continue to believe these types of agreements should be allowed. These types of agreements allow lawyers who operate on small margins to get paid upfront. Moreover, when agreements are written clearly and unambiguously, a client is free to either accept these terms or contract with a different lawyer who offers a different fee agreement. This type of agreement was allowed by this Court in *Grievance Administrator v Cooper*, 482 Mich 1079 (2008), and I continue to believe such agreements should be allowed when written and unambiguous. I urge the relevant members of the State Bar to provide feedback on these proposed changes.