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ETHICAL QUESTIONS & DILEMMAS

Managing IOLTA funds under amended Rule 1.15

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Recent amendments to Mass. R. Prof. C. 1.15 have significantly changed how Massachusetts lawyers must handle unclaimed and unidentified funds held in IOLTA accounts. What was once an area marked by uncertainty and inconsistent practices is now governed by a framework that imposes affirmative duties, defined timelines, and increased oversight by both financial institutions and the Board of Bar Overseers.

While these amendments provide much-needed clarity, they also introduce new compliance obligations. Lawyers now must take active steps to identify the owners of client funds, document their efforts, and, where appropriate, remit unclaimed funds to the IOLTA Committee.

THE AMENDED FRAMEWORK

The amendments to Rule 1.15 became effective on Sept. 1, 2024. The changes were made in response to the Supreme Judicial Court's decision in *Matter of Olchowski*, 485

Mass. 807 (2020), which clarified that undistributable IOLTA funds are not governed by the state's abandoned property laws. The revised rule establishes two complementary regimes addressing: (1) inactive IOLTA accounts; and (2) unclaimed or unidentified funds.

First, Rule 1.15(h) imposes a timeline on inactive IOLTA accounts. If an IOLTA account has no activity other than the accrual of interest for two and a half years, the financial institution must advise the lawyer in writing that it will notify the BBO if inactivity continues for six more months. If inactivity continues for six additional months, the institution is required to notify the BBO of the inactivity, with a copy to the lawyer.

After receiving the three-year inactivity notice, lawyers must: (1) close the account and distribute the funds to owners (if known) or to the IOLTA Committee, and notify the BBO of the action taken; or (2) if funds are in the account for a valid reason and the account should remain open, provide an explanation in writing to the BBO and to the financial institution.

If the lawyer does not take action within one year of the three-year inactivity notice, the financial institution may remit the remaining funds to the IOLTA Committee and close the account.

ETHICAL QUESTIONS & DILEMMAS

Second, Rule 1.15(i) creates an independent obligation triggered when a lawyer discovers unclaimed or unidentified funds in an IOLTA account. Upon discovery, the lawyer must undertake reasonable and diligent efforts to identify and locate the owner of the funds. If those efforts are unsuccessful, the lawyer may remit the funds to the IOLTA Committee at any time, but no later than three years after discovery.

Any remittance must be accompanied by an online affidavit submitted through the IOLTA Committee's online portal. The affidavit requires the lawyer to attest, under the pains and penalties of perjury, to the efforts undertaken to disburse the funds. Where the amount remitted exceeds \$500, the affidavit is automatically provided to the BBO for review.

DISCIPLINARY CONSIDERATIONS

Although the amendments establish new procedures, the accompanying disciplinary risks remain consistent with prior enforcement trends. Over the past several years,

the most common reason for lawyer discipline has been the mishandling of client funds (such as inadequate recordkeeping, commingling of client funds, failure to properly reconcile accounts, and delays in disbursing client funds).

In some cases, the violations have resulted in private admonitions. For example, in *Matter of Discipline of Two Attorneys*, 495 Mass. 1049 (2025), the SJC affirmed a single justice's imposition of a private admonition on two respondents who had undisbursed IOLTA funds amounting to more than \$100,000 in their IOLTA accounts.

Similarly, in Admonition No. 24-13, the respondent, a real estate conveyancing attorney, discovered that his IOLTA account had outstanding checks from older transactions totaling \$72,009.43, with some uncashed for up to 10 years.

In other cases, typically involving intentional misconduct or other rule violations, public reprimands have been imposed. See, e.g., *Matter of Matuzek*, 2018-DDC-6006 (Dec. 10, 2018) (commingling of funds); *Matter of McCabe*, 2009-DDC-4506 (April 13, 2009) (negligent misuse of client funds).

In *Matter of Michael L. Foy*, 2025-DDC-6785, the lawyer failed to maintain basic IOLTA records, deposited personal funds into the IOLTA account, and then used the IOLTA account to pay for personal and business expenses.

In *Matter of Kaleb Pan*, 2025-DDC-6780, a lawyer was publicly reprimanded for poor recordkeeping across multiple IOLTA accounts, resulting in several instances of negligent misuse of client funds.

As these recent cases demonstrate, the amendments to Rule 1.15 increase the likelihood that IOLTA recordkeeping deficiencies will be identified and that the Office of Bar

Counsel will investigate those deficiencies to determine whether discipline is warranted.

The affidavit requirements, coupled with the BBO's review of larger remittances and the required financial institution reporting of inactive accounts, will bring additional visibility into how lawyers are managing client funds.

PRACTICAL GUIDANCE FOR COMPLIANCE

In light of these developments, lawyers should take proactive steps to ensure compliance.

First, attorneys should regularly review their IOLTA accounts to identify any funds that may be unclaimed or unidentified. It is easier to return funds to clients if the client matter has recently concluded and the client can be easily located.

Second, upon identifying such funds, lawyers should promptly undertake and document reasonable efforts to identify and locate the owner, and then to disburse the funds. If an account has been inactive for some time, the lawyer may need to conduct online research to find current addresses for former clients or third parties who are entitled to funds in the IOLTA account. On occasion, the lawyer may need to actively work to disburse the funds, such as by confirming that a client or third party has received a reimbursement check and requesting that the recipient negotiate the check.

This can be a particularly onerous task for conveyancing lawyers, as closing attorneys often are holding funds for payment of closing expenses that ultimately are not needed or contingencies that never occur. Identifying the owners of those funds may require lawyers to review closing files and settlement

statements to pinpoint anticipated disbursements that were never made or duplicate payments that ended up being refunded.

Third, lawyers should implement procedures to track the dates on which client funds are identified as unclaimed or unidentified, as those dates trigger the three-year deadline for mandatory remittance to the IOLTA Committee.

Fourth, lawyers should familiarize themselves with the IOLTA Committee's online affidavit process and ensure that all required information is available before initiating a submission, which will require an online transmission of the funds. The IOLTA Committee's website has an online video explaining how the process works.

Finally, attorneys should maintain records relating to unclaimed or unidentified funds for at least 10 years, as required by Rule 1.15A. These records may be requested by the IOLTA Committee or the BBO if an individual or entity later seeks disbursement of funds that have been transferred to the IOLTA Committee.

The work associated with closing down an inactive IOLTA account may seem overwhelming, especially for sole practitioners or attorneys without full-time accounting support. Lawyers should not hesitate to seek help in getting through the process, including the resources available on the IOLTA Committee's website, www.maiolta.org, the BBO website, www.massbbo.org, and on the Lawyers Concerned for Lawyers website, www.lclma.org.

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