

Order

Michigan Supreme Court
Lansing, Michigan

December 15, 2009

Marilyn Kelly,
Chief Justice

ADM File No. 2008-13

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Adoption of New Rule 1.15A
of the Michigan Rules of
Professional Conduct

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following new Rule 1.15A of the Michigan Rules of Professional Conduct is adopted, and will become effective nine months after entry of this order by the Court.

[This is a new rule.]

Rule 1.15A Trust Account Overdraft Notification

- (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.

Staff Comment: This new rule, submitted by the State Bar of Michigan and supported by the Attorney Grievance Commission, requires attorneys to maintain client trust accounts in approved financial institutions. The State Bar of Michigan will establish guidelines for approving and terminating “approved status” for financial institutions, and will periodically publish a list of approved financial institutions. The financial institutions become approved by, among other requirements, agreeing to notify the Grievance Administrator and the lawyer if a lawyer’s trust account is overdrawn. If the Grievance Administrator sends the lawyer a request for investigation based on the overdraft, the lawyer is required to submit an explanation of the overdraft to the Grievance Administrator within 21 days.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 15, 2009

Corbin R. Davis

Clerk