

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1706

Adding new Bar Rule 15.1
concerning maintenance of
trust funds.

IT IS ORDERED:

The Alaska Bar Rules are amended by adding new Bar Rule 15.1 to read as follows:

Rule 15.1. Maintenance of Trust Funds in Financial Institutions That Agree to Provide Overdraft Notification.

(a) Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise.

(2) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall maintain and preserve for a period of at least five years after termination of the representation, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

(b) Overdraft Notification Agreement Required. A financial institution may be a depository for lawyer trust accounts if it agrees in a form provided by the Bar Association to report to Bar Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether the instrument is honored. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days' notice in writing to the Bar Counsel.

(c) Overdraft Reports. The overdraft notification reports made by the financial institution shall be in the following format:

(1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(d) Timing of Reports. Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(e) Consent By Lawyers. Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall be conclusively deemed to have

consented to the reporting and production requirements mandated by this rule. **A lawyer shall sign a waiver of confidentiality under AS 06.01.028.**

(f) Costs. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(g) Definitions. For purposes of this rule:

(1) "Financial institution" includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers;

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction; and

(3) "Notice of dishonor" refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

DATED: August 15, 2013

EFFECTIVE DATE: April 15, 2014

/s/
Chief Justice Fabe

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Bolger