

Amendments Adopted 02/09/2015 – Effective 2/09/2015

Rule 1.15 Safekeeping Property

* * *

(u) Every attorney who is required to pay an active annual assessment under Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (relating to annual registration of attorneys) shall pay an additional annual fee of \$30.00 for use by the IOLTA Board. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment. All amounts received pursuant to this subdivision shall be credited to the IOLTA Board.

* * *

Amendments Adopted 12/30/2014 – Effective 2/28/2015

Rule 1.7 Conflict of Interest: Current Clients

* * *

Comment:

* * *

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 5.8 for specific Rules that prohibit or restrict a lawyer's involvement in the offer, sale, or placement of investment products regardless of an actual conflict or the potential for conflict. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

* * *

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

* * *

Comment:

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers

to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. But see Rule 5.8 for specific Rules that prohibit or restrict a lawyer's involvement in the offer, sale, or placement of investment products regardless of an actual conflict or the potential for conflict. Rule 1.8 also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

* * *

Rule 1.15 Safekeeping Property

* * *

(c) *Required records.* Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

(1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and

(2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

(3) The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have

a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

(4) A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

* * *

(g) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a Trust Account or any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).

* * *

Comment:

* * *

[2] 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, including those records identified in paragraph (c). With little exception, funds belonging to a client or third party must be deposited into a Trust Account as defined in paragraph (a)(11), and funds belonging to the lawyer must be deposited in a business operating account maintained pursuant to paragraph (j). Thus, unless the client gives informed consent, confirmed in writing, to a different manner of handling funds advanced by the client to cover fees and expenses, the lawyer must deposit those funds into a Trust Account pursuant to paragraph (i). If the lawyer pools such funds belonging to more than one client, under paragraph (c)(2) the lawyer must keep a ledger for each individual client, regularly recording all funds received from the client and their purpose, and all disbursements of earned fees and expenses incurred. As fees become earned, the lawyer must promptly transfer those funds to the operating account. If the lawyer pools client funds after settlement or verdict in a single Trust Account, the lawyer must maintain a ledger of receipts and disbursements for each individual client, regularly recording the dates of each transaction, the identity of payors and payees, and the purpose of each disbursement, withdrawal or transfer of funds. The requirement of monthly reconciliations should deter situations where an

attorney's Trust Account contains a shortfall for any significant period of time. Additionally, if a lawyer fails to maintain the records identified in paragraph (c) or to perform the required monthly reconciliations, later claims by the lawyer that a shortfall (i.e., misappropriation) resulted from negligence, even if credible, will necessarily be balanced against the lawyer's abdication of responsibility to comply with essential requirements associated with acting as a fiduciary and serving in a position of trust. The failure to maintain or timely produce the records required by paragraph (c) hampers rule-mandated or agency-promulgated investigative inquiries by the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel and may serve as a basis for emergency temporary suspension of the lawyer's license to practice law. See Pa.R.D.E. 208(f)(1), 208(f)(5), 213(g)(2) and 221(g)(3).

* * *

RPC 5.7 Responsibilities Regarding Nonlegal Services

* * *

Comment:

* * *

Providing Nonlegal Services that Are Not Distinct from Legal Services

[3] Under some circumstances, the legal and nonlegal services may be so closely entwined that they cannot be distinguished from each other. In this situation, confusion by the recipient as to when the protection of the client-lawyer relationship applies is likely to be unavoidable. Therefore, Rule 5.7(a) requires that the lawyer providing the nonlegal services adhere to all of the requirements of the Rules of Professional Conduct.

[4] In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3 that of nonlawyer employees, comply in all respects with the Rules of Professional Conduct. When a lawyer is obliged to accord the recipients of such nonlegal services the protection of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(b) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the nonlegal services must also in all respects comply with Rule 5.8 relating to prohibitions and restrictions on dealing in investment products, and with Rules 7.1 through 7.3, dealing with advertising and solicitation.

* * *

Rule 5.8 Dealing in Investment Products: Prohibitions and Restrictions

(a) A lawyer shall not broker, offer to sell, sell, or place any investment product unless separately licensed to do so.

(b) A lawyer shall not recommend or offer an investment product to a client or any person with whom the lawyer has a fiduciary relationship, or

invest funds belonging to such a person in an investment product, if the lawyer or a person related to the lawyer:

(1) has an interest in compensation paid or provided by a person other than the client or person with whom the lawyer has a fiduciary relationship; or

(2) has an ownership interest in the entity that sponsors, insures, underwrites, manages, or issues the investment product.

(c) For purposes of this Rule:

(1) the term "investment product" includes: an annuity contract; a life insurance contract; a commodity; a swap; an investment fund, including but not limited to a collective trust fund, a common trust fund, a real estate investment fund, and registered investment company; a security, whether or not the security is registered with any federal or state securities regulator; or an investment adviser's, bank's, trust company's, insurance company's, or other financial institution's service as an investment manager or investment adviser;

(2) "person related to the lawyer" includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer maintains a close familial relationship; and

(3) the term "ownership interest" does not include shares of an issuer that has registered the shares under federal securities laws, the issuer's shares are traded on a securities exchange that is registered under federal securities laws, and the lawyer's aggregate interest in shares of all classes is less than one percent of the issuer's outstanding common shares.

Comment:

[1] Paragraph (a) prohibits a lawyer from brokering, offering to sell, selling, or placing any investment product, as defined in paragraph (c)(1), unless separately licensed to do so. Licensing and registration requirements vary by state. Before offering or selling any investment product in relation to the provision of legal services, a lawyer must consult all applicable federal and state laws to determine eligibility, licensing and regulatory requirements. Paragraph (a) neither addresses the giving of investment advice nor is intended to supplant or otherwise affect federal and state laws that either require licensing and registration in order to give investment advice or exempt lawyers from their regulatory scheme.

[2] Paragraph (b) prohibits investment situations that are fraught with a potential for a conflict of interest or that provide an opportunity for the lawyer to control or unduly influence the use or management of the funds throughout the course of the investment. Clients who place their trust in their lawyer and assume or expect that the lawyer will protect them from harm are likely to feel deceived if substantial sums of money are lost on investments pursued at the lawyer's recommendation or prompting and the lawyer or a person related to the lawyer either receives compensation or a pecuniary benefit from a person other than the client or has an ownership interest in the entity that sponsors, insures, underwrites, manages, or issues the investment product, even when the reason for the loss is limited to unexpected market conditions. The prohibition of paragraph (b) is not imputed to other lawyers in the lawyer's firm or those lawyers' relatives.

[3] This Rule applies to a lawyer under any circumstance—whether the lawyer is providing legal services, nonlegal services that are not distinct from legal services, or nonlegal services that are distinct from legal services. See Rule 5.7(e) for the meaning of the term "nonlegal services." The prohibition of paragraph (b) is in addition to the restrictions imposed by Rules 1.7(a)(2), 1.8(a) and 5.7.

Amendments Adopted 9/23/2016 – Effective 10/23/2016

Rule 1.17 Sale of Law Practice

A lawyer or law firm may, for consideration, sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in Pennsylvania; however, the seller is not prohibited from assisting the purchaser in the orderly transition of active client matters for a reasonable period after the closing without a fee.

(b) The seller sells the entire practice, or the entire area of practice, to one or more lawyers or law firms.

(c) The seller gives written notice to each of the seller's clients, which notice must include at a minimum:

(1) notice of the proposed transfer of the client's representation, including the identity and address of the purchaser;

(2) a statement that the client has the right to representation by the purchaser under the preexisting fee arrangements;

(3) a statement that the client has the right to retain other counsel or to take possession of the file; and

(4) a statement that the client's consent to the transfer of the representation will be presumed if the client does not take any action or does not otherwise object within 60 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning

fees and the scope of work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

(e) The agreement of sale shall include a clear statement of the respective responsibilities of the parties to maintain and preserve the records and files of the seller's practice, including client files.

(f) In the case of a sale by reason of disability, if a proceeding under Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement has not been commenced against the seller, the seller shall file the notice and request for transfer to voluntary inactive status, as of the date of the sale, pursuant to Rule 219(j) thereof.

(g) The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser because of other requirements of the Pennsylvania Rules of Professional Conduct or rules of the Pennsylvania Supreme Court governing the practice of law in Pennsylvania, unless such conflict, requirement or rule can be waived by the client and the client gives informed consent.

(h) For purposes of this Rule, the term "seller" means an individual lawyer or a law firm that sells a law practice or an area of law practice, and includes both the personal representative or estate of a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.

(i) Admission to or withdrawal from a law partnership or professional association, retirement plan or similar arrangement or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.

Comment:

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or a law firm ceases to engage in the private practice of law or ceases to practice in an area of law in Pennsylvania and other lawyers or firms take over the representation of the clients—of the seller, the seller, including the personal representative or estate of a deceased or disabled lawyer, may obtain compensation for the reasonable value of the practice similar to withdrawing partners of law firms. See Rules 5.4 and 5.6. Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

Termination of Practice by the Seller

The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation of this Rule. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to a judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves this jurisdiction typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[5] This Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee generating matters. The purchasers are required to undertake all client matters in the practice, or practice area, subject to client consent. If, however, the purchaser is unable to undertake all client matters because of nonwaivable conflicts of interest, other requirements of these Rules or rules of the Supreme Court governing the practice of law in Pennsylvania, the requirement is nevertheless satisfied.

Client Confidences

[6] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms with respect to which client consent is not required. See Rule 1.6(c)(6) and (7). Providing the purchaser access to the client-specific detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed.

[5] The Rule provides the minimum notice to the seller's clients necessary to make the sale effective under the Rules of Professional Conduct. The person responsible for notice is encouraged to give sufficient information concerning the purchasing law firm or lawyer who will handle the matter so as to provide the client adequate information to make an informed decision concerning ongoing representation by the purchaser. Such information may include without limitation the buyer's background, education, experience with similar matters, length of practice, and whether the lawyer(s) are currently licensed in Pennsylvania.

[6] No single method is provided for the giving of actual written notice to the client under paragraph (c). It is up to the person undertaking to give notice to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the person responsible for giving notice to make this decision.

Notice and Consent

[7] Once an agreement is reached between the seller and the purchaser, the client must be given written notice of the contemplated sale and file transfer including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 60 days. If notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed. The Rule provides the minimum notice to the seller's clients necessary to make the sale effective under the Rules of Professional Conduct. The seller is encouraged to give sufficient information concerning the purchasing law firm or lawyer who will handle the matter so as to provide the client adequate information to make an informed decision concerning ongoing representation by the purchaser. Such information may include without limitation the purchaser's background, education, experience with similar

matters, length of practice, and whether the purchaser is currently licensed in Pennsylvania.

[8] No single method is provided for the giving of written notice to the client under paragraph (c). It is up to the seller to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the seller to make this decision.

[9] All of the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged to the clients of the practice. This protection is underscored by both paragraph (c)(2) and paragraph (d). Existing agreements between the seller and the client as to the fees and the scope of the work must be honored by the purchaser, unless the client gives informed consent confirmed in writing.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts which can be waived by the client (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation. See Rules 1.6 and 1.9.

[12] If approval of the substitution of the purchasing attorney for the selling attorney is required by the Rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. See Rule 1.16.

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased or disabled lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in the sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchaser can be expected to see to it that they are met.

[14] This Rule does not apply to transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Amendments Adopted 10/26/2016 – Effective 11/25/2016

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

Comment:

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall

consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Amendments Adopted 12/5/2016 – Effective 1/4/2017

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt a tribunal.

Comment:

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Code of Judicial Conduct and/or the Rules Governing Standards of Conduct for Magisterial District Judges, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Rule 8.2 Statements Concerning Judges and Other Adjudicatory Officers

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct and/or the Rules Governing Standards of Conduct for Magisterial District Judges, as applicable.

Comment:

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Amendments Adopted 04/23/2018 – Effective 7/1/2018

RPC 1.1 Competence

Comment:

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. To provide competent representation, a lawyer should be familiar with policies of the courts in which the lawyer practices, which include the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

RPC 1.6 Confidentiality of Information

Comment:

Acting Competently to Preserve Confidentiality

[25] Pursuant to paragraph (d), a lawyer should act in accordance with court policies governing disclosure of sensitive or confidential information, including the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. Paragraph (d) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (d) if

the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

Rule 1.15. Safekeeping Property.

(v) Unclaimed or Unidentifiable IOLTA Funds

(1) When a lawyer or law firm cannot, using reasonable efforts for a minimum of two (2) years, identify or locate the owner of funds in either its Pennsylvania IOLTA account or the Pennsylvania IOLTA account of a deceased lawyer whose estate is represented by the lawyer or law firm, it shall pay the funds to the Pennsylvania IOLTA Board. At the time such funds are remitted, the lawyer or law firm shall submit to the IOLTA Board the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, and the amount of unclaimed funds to which each owner is entitled, if known; the amount of any unidentifiable funds; and a description of the efforts undertaken to identify and locate the owner(s).

(2) If, after making a payment of unclaimed or unidentifiable funds to the Pennsylvania IOLTA Board, the lawyer or law firm identifies and locates the owner of funds paid, the IOLTA Board shall refund the sum to the lawyer or law firm. The lawyer or law firm shall submit to the IOLTA Board a verification attesting that the funds have been returned to the owner. The IOLTA Board shall review claims submitted by purported owners of funds when the lawyer or law firm that originally remitted the funds to the IOLTA Board is no longer available. The IOLTA Board shall maintain a sufficient reserve to pay all claims for such funds.

(3) Should the Pennsylvania Lawyers Fund for Client Security pay an award to a former client of a lawyer, law firm, or deceased lawyer who has remitted funds under this Rule to the IOLTA Board, the Pennsylvania Lawyers Fund for Client Security may pursue a reimbursement of such award from

unclaimed funds remitted by the lawyer, law firm, or deceased lawyer to the IOLTA Board in which the former client held an ownership interest. In no event would a reimbursement to the Pennsylvania Lawyers Fund for Client Security exceed the amount of funds remitted to the IOLTA Board by the subject lawyer, law firm, or deceased lawyer.

(4) A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility as a result of his or her good faith adherence to the unclaimed or unidentifiable IOLTA fund requirements in this subsection.

Comment

(12) For purposes of subsection (v), unidentifiable funds refers to funds accumulated in an IOLTA account that cannot be reasonably documented as belonging to a client, former client, third party, or the lawyer or law firm. Unclaimed funds refers to funds for which a client, former client, or third party appear to have an interest, but have not responded to the lawyer or law firm's reasonable efforts to encourage the client, former client, or third party to claim their rightful funds. A lawyer or law firm's reasonable efforts to identify the owner of funds include a review of transaction records, client ledgers, case files, and any other relevant fee records. Reasonable efforts to locate the owner of funds include periodic correspondence of the type contemplated by the lawyer or law firm's relationship with the client, former client, or third party. Should such correspondence prove unsuccessful, a lawyer or law firm's reasonable efforts include efforts similar to those that would be undertaken when attempting to locate a person for service of process, such as examinations of local telephone directories, courthouse records, voter registration records, local tax records, motor vehicle records, or the use of consolidated online search services that access such records. Lawyers must maintain records of the disposition of unclaimed or unidentifiable funds and make such records available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in accordance with Pa. R.P.C. 1.15(c). The IOLTA Board shall make a standardized form with instructions available on the IOLTA Board's website or by request for use by lawyers submitting unclaimed or unidentifiable funds to the IOLTA Board. Conservators appointed pursuant to Pa.R.D.E. 321 should follow the procedure in Pa.R.D.E. 324(c)(1) for distributing unclaimed and unidentifiable funds.

Amendments Adopted 07/30/2018 – Effective 9/28/2018

Rule 7.3 Solicitation of Clients

(b) A lawyer may contact, or send a written communication to, the target of the solicitation for the purpose of obtaining professional employment unless:

Amendment Adopted 4/18/2019 – Effective 5/18/2019

Rule 8.3 Reporting Professional Misconduct

Comment:

[9] Likewise, Pa.R.D.E. 216(e) requires an attorney who has been transferred to disability inactive status or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, to report the fact of that transfer, suspension, disbarment, revocation or resignation to the Disciplinary Board of the Supreme Court of Pennsylvania within 20 days after the date of the order, judgment or directive imposing or confirming the discipline or transfer to disability inactive status.

- (1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;
- (2) the person has made known to the lawyer a desire not to receive communications from the lawyer;
- (3) the communication involves coercion, duress, or harassment; or
- (4) the communication is a solicitation to a party who has been named as a defendant or respondent in a domestic relations action. In such cases, the lawyer shall wait until proof of service appears on the docket before communication with the named defendant or respondent.

Comment:

[8] In this instance, the term “domestic relations actions” includes the actions governed by the Family Court Rules, see Pa.R.C.P. No. 1931(a), and actions pursuant to the Protection of Victims of Sexual Violence or Intimidation Act, see 42 Pa.C.S. §§62A03 *et seq.* In such cases, a defendant/respondent party’s receipt of a lawyer’s solicitation prior to being served with the complaint can increase the risk of a violent confrontation between the parties. The prohibition in RPC 7.3(b)(4) against any solicitation prior to proof of service appearing on the docket is intended to reduce any such risk and allow for the plaintiff to take any appropriate steps.

Amendment Adopted 02/07/2019 – Effective 2/07/2020

Rule 1.15. Safekeeping Property

(u) Every attorney who is required to pay an active annual assessment under Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (relating to annual registration of attorneys) shall pay an additional annual fee of \$25.00 for use by the IOLTA Board. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment. All amounts received pursuant to this subdivision shall be credited to the IOLTA Board.
