



Supreme Court of Illinois

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SUPREME COURT AMENDS RULE ON LAWYER TRUST ACCOUNTS; CHANGES WILL BENEFIT LEGAL AID

Chief Justice Rita B. Garman and the Illinois Supreme Court on Tuesday announced amendments to a rule that will help lawyers properly dispose of unidentified funds in their trust accounts and generate revenue to support legal aid in the process.

The changes to Rule 1.15 of the Illinois Rules of Professional Conduct, which regulates the safe-keeping of client property, creates a mechanism for lawyers to remove unidentified fund balances from their Interest on Lawyers Trust (IOLTA) Accounts.

The amended rule takes effect July 1, 2015. A copy of the changes can be found at http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#1.15.

An IOLTA account is a pooled interest or dividend-bearing client trust account established with an eligible financial institution used for the deposit of nominal or short-term client funds. Interest on these accounts is paid to the Lawyers Trust Fund of Illinois (LTF), which uses that interest to make grants to not-for-profit legal aid programs providing civil legal assistance to the poor.

The LTF earlier this year proposed the amendments, which provide a solution for lawyers facing the difficult practical and regulatory problem of being unable to trace a balance of funds in their IOLTA accounts to a client, third party or themselves.

"This amendment is meant to assist lawyers in the orderly disposition of unidentified funds in IOLTA accounts," said Chief Justice Garman. "It will help lawyers to manage their IOLTA accounts better and, very importantly, yield revenue that can be put to productive use in supporting legal aid in Illinois."

Ruth Ann Schmitt, executive director of the LTF, said the issue of unidentified funds can arise during times of transition—when a lawyer is preparing to retire, sell his or her law practice or join the bench. The issue also comes up when a lawyer dies, and the lawyer's executor or heirs are left with the task of making disbursements from an IOLTA account.

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Unidentified funds present more complications than unclaimed funds, which is money left in IOLTA accounts because lawyers are unable to locate or get a response from the funds' owner.

When it comes to unclaimed funds, the Illinois Attorney Registration and Disciplinary Commission (ARDC) in its *Client Trust Account Handbook*) directs lawyers to remit funds that have been unclaimed for five years to the state treasurer under the Uniform Disposition of Unclaimed Property Act (UDUPA).

"In contrast, handling unidentified funds is much less straightforward, and poses several problems," Schmitt said.

The ARDC's *Client Trust Account Handbook* directs lawyers who can't figure out whether funds in their IOLTA accounts belong to a client, third party or themselves to proceed under the UDUPA as if they were unclaimed funds.

"Proceeding under the UDUPA is a lengthy process that is especially burdensome for practitioners planning to retire and for successors or heirs with no expectation of maintaining the practice for any during," Schmitt said.

"This quandary deters lawyers from following the UDUPA and instead may lead them to do nothing by leaving accumulated funds in IOLTA accounts where they serve no productive purpose, or by disposing the funds in a manner that does not comport with the statute or with the Rules of Professional Conduct."

Unidentified funds can be the result of mathematical errors, faulty recordkeeping or mistaken deposits by banks of IOLTA interest. Some unidentified funds may be past legal fees that lawyers did not collect and now lack sufficient records to claim.

Under the amended rule, lawyers must remit unidentified funds to the LTF, rather than following the procedure under the UDUPA. It also requires lawyers to make reasonable efforts to identify and return the funds over a 12-month period before remitting them to the LTF and includes a provision that the LTF will refund money remitted if the fund's owner is later identified.

"Revenue from the remittance of unidentified funds has the potential to offset some of the recent declines in IOLTA income," Schmitt said.

IOLTA income took a dive during the financial crisis in 2008 after the Federal Reserve decreased its target interest rate to the current .0 to 0.25 percent level. It has continued to fall as banks, in response to market conditions, drop the rates paid on IOLTA accounts.

Since it was founded in 1983, LTF has awarded more than \$135 million in grants to not-for-profit legal aid offices throughout Illinois. The grants are funded by IOLTA revenues and the portion of the annual attorney registration fee directed by the Illinois Supreme Court to support legal aid.

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In 2013, the Supreme Court increased the legal aid portion of the attorney registration fee from \$42 to \$95. Thanks to both revenue sources, LTF has awarded about \$8 million in annual grants to support legal aid over the past seven years.

Illinois is not the first state to use unidentified client funds to support legal aid.

In Oregon, for instance, a statutory provision dealing with both unclaimed and unidentified funds has generated about \$262,000 in funds distributed to legal aid since 2010.

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