M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered November 23, 2009.

Effective December 1, 2009, Supreme Court Rule 792 is amended, and effective January 1, 2010, Rule 1.15 and Rule 3.9, and the Committee Comments thereto, of the Illinois Rules of Professional Conduct of 2010 are amended, as follows.

Amended Rule 792

Rule 792. The MCLE Board

(a) Administration

The administration of the program for MCLE shall be under the supervision of the Minimum Continuing Legal Education Board ("Board").

(b) Selection of Members; Qualifications; Terms

(1) The Board shall consist of 10 members, appointed by the Supreme Court ("Court"). At least one member shall be a nonattorney; at least one member shall be a circuit court judge; and one member shall be a member of the Supreme Court Commission on Professionalism. The Executive Director of the Supreme Court Commission on Professionalism shall serve as an *ex-officio* member in addition to the 10 members appointed by the Court but shall have no vote.

(2) To be eligible for appointment to the Board, an attorney must have actively practiced law in Illinois for a minimum of 10 years.

(3) Three members, including the chairperson, shall initially be appointed to a three-year term. Three members shall be appointed to an initial two-year term, and three members shall be appointed to an initial one-year term. Thereafter, all members shall be appointed or re-appointed to three-year terms. The Supreme Court Commission on Professionalism member shall be appointed to a term concurrent with his or her term on the Commission.

(4) Board members shall be limited to serving ~~two consecutive terms~~ three consecutive three-year terms.

(5) No individual may be appointed to the Board who stands to gain financially,

directly or indirectly, from accreditation or other decisions made by the Board.

(6) Any member of the Board may be removed by the Court at any time, without cause.

(7) Should a vacancy occur, the Court shall appoint a replacement to serve for the unexpired term of the member.

(8) Board members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in performing their official duties, including reasonable travel costs to and from Board meetings.

(9) The chairperson shall be appointed by the Court. Other officers shall be elected by the members of the Board at the first meeting of each year.

(c) Powers and Duties

The Board shall have the following powers and duties:

(1) To recommend to the Court rules and regulations for MCLE not inconsistent with the rules of the Court and these Rules, including fees sufficient to ensure that the MCLE program is financially self-supporting; to implement MCLE rules and regulations adopted by the Court; and to adopt forms necessary to insure attorneys' compliance with the rules and regulations.

(2) To meet at least twice a year, or more frequently as needed, either in person, by conference telephone communications, or by electronic means. Six members of the Board shall constitute a quorum for the transaction of business. A majority of the quorum present shall be required for any official action taken by the Board.

(3) To accredit commercial and noncommercial continuing legal education ("CLE") courses and activities, and to determine the number of hours to be awarded for attending such courses or participating in such activities.

(4) To review applications for accreditation of those courses, activities or portions of either that are offered to fulfill the professional responsibility requirement in Rule 794(d)(1) for conformity with the accreditation standards and hours enumerated in Rule 795, exclusive of review as to substantive content. Those courses and activities determined to be in conformance shall be referred to the Supreme Court Commission on Professionalism for substantive review and approval as provided in Rules 799(c)(5) and (d)(6)(i). Professional responsibility courses or activities approved by both the Commission on Professionalism and the MCLE Board as specified in this subsection shall be eligible for accreditation by the MCLE Board.

(5) To submit an annual report to the Court evaluating the effectiveness of the MCLE Rules and the quality of the CLE courses, and presenting the Board's recommendations, if any, for changes in the Rules or their implementation, a financial report for the previous fiscal year, and its recommendations for the new fiscal year. There shall be an independent annual audit of the MCLE fund as directed by the Court, the expenses of which shall be paid out of the fund. The audit shall be submitted as part of the annual report to the Court.

(6) To coordinate its administrative responsibilities with the Attorney Registration and Disciplinary Commission ("ARDC"), and to reimburse expenses incurred by the ARDC attributable to enforcement of MCLE requirements.

(7) To take all action reasonably necessary to implement, administer and enforce these rules and the decisions of the MCLE Director, staff and Board.

(8) To establish policies and procedures for notification and reimbursement of course fees, if appropriate, in those instances where course accreditation is withheld or withdrawn.

(d) Administration

The Board shall appoint, with the approval of the Supreme Court, a Director of MCLE ("Director") to serve as the principal executive officer of the MCLE program. The Director, with the Board's authorization, will hire sufficient staff to administer the program. The Board will delegate to the Director and staff authority to conduct the business of the Board within the scope of this Rule, subject to review by the Board. The Director and staff shall be authorized to acquire or rent physical space, computer hardware and software systems and other items and services necessary to the administration of the MCLE program.

(e) Funding

The MCLE program shall initially be funded in a manner to be determined by the Court. Thereafter, funding shall be derived solely from the fees charged to CLE providers and from late fees and reinstatement fees assessed to individual attorneys. This schedule of CLE provider fees, late fees, and reinstatement fees must be approved by the Court, and any reference in these Rules to a fee assessed or set by the Board means a fee based on the Court-approved fee schedule.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately; amended November 23, 2009, effective December 1, 2009.

Illinois Rules of Professional Conduct of 2010

Amended Rule 1.15

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred. Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer's general account or other account belonging to the lawyer. An advance payment retainer may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term "advance payment retainer" to describe the retainer, and states the following:

(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client;

(2) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;

(3) the manner in which the retainer will be applied for services rendered and expenses incurred;

(4) that any portion of the retainer that is not earned or required for expenses will be refunded to the client;

(5) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer's reasons for that condition.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) All nominal or short-term funds of clients or third persons held by a lawyer or law firm, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more pooled interest- or dividend-bearing trust accounts known as Interest on Lawyers' Trust Accounts ("IOLTA accounts"), established with an eligible financial institution selected by a lawyer or law firm in the exercise of ordinary prudence, and with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each IOLTA account shall comply with the following provisions:

(1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois. An eligible financial institution is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission, which offers IOLTA accounts within the requirements of this Rule as administered by the Lawyers Trust Fund of Illinois.

(2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product:

(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.

(b) for accounts with balances of $100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h).

(c) for accounts with balances of $100,000 or more, a money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million.

(4) As an alternative to the account options in paragraph (f)(3), the financial institution may pay a "safe harbor" yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher.

(5) Each lawyer or law firm shall direct the eligible financial institution to remit

monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.

(6) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.

(7) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.

(g) Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(h) Definitions

(1) "IOLTA account" means an interest- or dividend-bearing trust account benefitting the Lawyers Trust Fund of Illinois, established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law.

(2) "Money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.

(3) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

(4) "Safe harbor" is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate, as reported in the Wall Street Journal on the first business day of the calendar month, or 1.0%, whichever is higher.

(5) "Allowable reasonable fees" for IOLTA accounts are per-check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

(i) In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the "good-funds" requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. §202.2, (g) a check from a title

insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted July 1, 2009, effective January 1, 2010; amended November 23, 2009, effective January 1, 2010.

Amended Rule 3.9

RULE 3.9: ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c)~~,~~ and 3.4(a) through (c)~~, and 3.5~~.

Adopted July 1, 2009, effective January 1, 2010; amended November 23, 2009, effective January 1, 2010.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rulemaking or policymaking capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decisionmaking body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c)~~,~~ and 3.4(a) through (c)~~ and 3.5~~.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in ~~connection with~~ an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in otherwise permitted lobbying activities, a negotiation or

other bilateral transaction with a governmental agency, or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

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