

APPENDIX TO CHAPTERS 18 TO 20
COLORADO RULES OF PROFESSIONAL CONDUCT
Repeal and Readoption of CRCP 1.15

Rule 1.15A. General Duties of Lawyers Regarding Property of Clients and Third Parties

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in trust accounts maintained in compliance with Rule 1.15B. Other property shall be appropriately safeguarded. Complete records of such funds and other property of clients or third parties shall be kept by the lawyer in compliance with Rule 1.15D.

(b) Upon receiving funds or other property of a client or third person, a lawyer shall, promptly or otherwise as permitted by law or by agreement with the client or third person, deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, promptly upon request by the client or third person, render a full accounting regarding such property.

(c) When in connection with a 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 there is a resolution of the claims and, when necessary, a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute 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.

(d) The provisions of Rule 1.15B, Rule 1.15C, Rule 1.15D, and Rule 1.15E apply to funds and other property, and to accounts, held or maintained by the lawyer, or caused by the lawyer to be held or maintained by a law firm through which the lawyer renders legal services, in connection with a representation.

COMMENT

Note: The following six comments are applicable to this Rule 1.15A and to Rule 1.15B, Rule 1.15C, Rule 1.15D, and Rule 1.15E.

[1] Trust accounts containing funds of clients or third persons held in connection with a representation must be interest-bearing or dividend-paying for the benefit of the clients or third persons or, if the funds are nominal in amount or expected to be held for a short period of time, for the benefit of the Colorado Lawyer Trust Account Foundation (“COLTAF”). A lawyer should exercise good faith judgment in determining initially whether funds are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest-bearing account for the benefit of the client or third person. The lawyer should also consider such other factors as (i) the costs of establishing and maintaining the account, service charges, accounting fees, and tax report procedures; (ii) the nature of the transaction(s) involved; and (iii) the likelihood of delay in the relevant proceedings.

A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of such funds, including without limitation the action described in paragraph 1.15B(i).

[2] If a lawyer or law firm participates in Interest on Lawyer Trust Account ("IOLTA") programs in more than one jurisdiction, including Colorado, IOLTA funds that the lawyer or law firm holds in connection with the practice of law in Colorado should be held in the lawyer or law firm's COLTAF account (as defined in Rule 1.15B(2)(b)). The lawyer or law firm should exercise good faith judgment in determining which IOLTA funds it holds in connection with the practice of law in Colorado.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds should be promptly distributed.

[4] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction. See Rule 1.16(d) for standards applicable to retention of client papers.

[6] The duty to keep separate from the lawyer's own property any property in which any other person claims an interest exists whether or not there is a dispute as to ownership of the property. Likewise, although the second sentence of Rule 1.15A(c) deals specifically with disputed ownership, the first sentence of that provision applies even if there is no dispute as to ownership.

Rule 1.15B. Account Requirements

(a) Every lawyer in private practice in this state shall maintain in the lawyer's own name, or in the name of the lawyer's law firm:

(1) A trust account or accounts, separate from any business and personal accounts and from any other fiduciary accounts that the lawyer or the law firm may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which the lawyer shall deposit, or shall cause the law firm to deposit, all funds entrusted to the lawyer's care and any advance payment of fees that have not been earned or advance payment of expenses that have not been incurred. A lawyer shall not be required to maintain a trust account when the lawyer is not holding such funds or payments.

(2) A business account or accounts into which the lawyer shall deposit, or cause the law firm to deposit, all funds received for legal services. Each business account, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a "business account," an "office account," an "operating account," or a "professional account," or with a similarly descriptive term that distinguishes the account from a trust account and a personal account.

(b) One or more of the trust accounts may be a Colorado Lawyer Trust Account Foundation ("COLTAF") account. A "COLTAF account" is a pooled trust account for funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time, and as such would not be expected to earn interest or pay dividends for such clients or third persons in excess of the reasonably estimated cost of establishing, maintaining, and accounting for trust accounts for the benefit of such clients or third persons. Interest or dividends paid on a COLTAF account shall be paid to COLTAF, and the lawyer and the law firm shall have no right or claim to such interest or dividends.

(c) Each trust account, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account," provided that each COLTAF account shall be designated as a "COLTAF Trust Account." A trust account may bear any additional descriptive designation that is not misleading.

(d) Except as provided in this paragraph (d), each trust account, including each COLTAF account, shall be maintained in a financial institution that is approved by the Regulation Counsel pursuant to Rule 1.15E. If each client and third person whose funds are in the account is informed in writing by the lawyer that Regulation Counsel will not be notified of any overdraft on the account, and with the informed consent of each such client and third person, a trust account in which interest or dividends are paid to the clients or third persons need not be in an approved institution.

(e) Each trust account, including each COLTAF account, shall be an interest-bearing, or dividend-paying, insured depository account; provided that, with the informed consent of each client or third person whose funds are in the account, an account in which interest or dividends are paid to clients or third persons need not be an insured depository account. For the purpose of this provision, an "insured depository account" shall mean a government insured account at a regulated financial institution, on which withdrawals or transfers can be made on demand, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(f) The lawyer may deposit, or may cause the law firm to deposit, into a trust account funds reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of the account. Such funds shall be clearly identified in the lawyer's or law firm's records of the account.

(g) All funds entrusted to the lawyer shall be deposited in a COLTAF account unless the funds are deposited in a trust account described in paragraph (h) of this Rule. The foregoing requirement that funds be deposited in a COLTAF account does not apply in those instances where it is not feasible for the lawyer or the law firm to establish a COLTAF account for reasons beyond the control of the lawyer or law firm, such as the unavailability in the community of a financial institution that offers such an account; but in such case the funds shall be deposited in a trust account described in paragraph (h) of this Rule.

(h) If funds entrusted to the lawyer are not held in a COLTAF account, the lawyer shall deposit, or shall cause the law firm to deposit, the funds in a trust account that complies with all requirements of paragraphs (c), (d), and (e) of this Rule and for which all interest earned or dividends paid (less deductions for service charges or fees of the depository institution) shall belong to the clients or third persons whose funds have been so deposited. The lawyer and the law firm shall have no right or claim to such interest or dividends.

(i) If the lawyer or law firm discovers that funds of a client or third person have mistakenly been held in a COLTAF account in a sufficient amount or for a sufficiently long time so that interest or dividends on the funds being held in such account exceeds the reasonably estimated cost of establishing, maintaining, and accounting for a trust account for the benefit of such client or third person (including without limitation administrative costs of the lawyer or law firm, bank service charges, and costs of preparing tax reports of such income to the client or third person), the lawyer shall request, or shall cause the law firm to request, a refund from COLTAF, for the benefit of such client or third persons, of the interest or dividends in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide to any lawyer or law firm upon request.

(j) Every lawyer or law firm maintaining a trust account in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by Rule 1.15E and shall indemnify and hold harmless the financial institution for its compliance with such reporting and production requirement.

Note: See comments following Rule 1.15A.

Rule 1.15C. Use of Trust Accounts

(a) A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a trust account. Cash withdrawals from trust accounts and checks drawn on trust accounts payable to "Cash" are prohibited. All trust account funds intended for deposit shall be deposited intact without deductions or "cash out" from the deposit, and the duplicate deposit slip that evidences the deposit shall be sufficiently detailed to identify each item deposited.

(b) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in this state or by a person supervised by such lawyer. Such withdrawals and transfers may be made only by authorized bank or wire transfer or by check payable to a named payee. Only a lawyer admitted to practice law in this state or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(c) No less than quarterly, a lawyer admitted to practice law in this state or a person supervised by such a lawyer shall reconcile the trust account records both as to individual clients or other persons and in the aggregate with the bank statements issued by the bank in which the trust account is maintained.

Note: See comments following Rule 1.15A.

Rule 1.15D. Required Records

(a) A lawyer shall maintain, or shall cause the lawyer's law firm to maintain, in a current status and shall retain or cause the lawyer's law firm to retain for a period of seven years after the event that they record:

(1) An appropriate record-keeping system identifying each separate person for whom the lawyer or the law firm holds funds or other property and adequately showing the following:

(A) For each trust account the date and amount of each deposit; the name and address of each payor of the funds deposited; the name and address of each person for whom the funds are held and the amount held for the person; a description of the reason for each deposit; the date and amount of each charge against the trust account and a description of the charge; the date and amount of each disbursement; and the name and address of each person to whom the disbursement is made and the amount disbursed to the person.

(B) For each item of property other than funds, the nature of the property; the date of receipt of the property; the name and address of each person from whom the property is received, the name and address of each person for whom the property is held and, if interests in the property are held by more than one person, a statement of the nature and extent of each person's interest in the property, to the extent known; a description of the reason for each receipt; the date and amount of each charge against the property and a description of the charge; the date of each delivery of the property by the lawyer; and the name and address of each person to whom the property is delivered by the lawyer.

(2) Appropriate records of all deposits in and withdrawals from all other bank accounts maintained in connection with the lawyer's legal services, specifically identifying the date, payor, and description of each item deposited as well as the date, payee, and purpose of each disbursement;

(3) Copies of all written communications setting forth the basis or rate for the fees charged by the lawyer as required by Rule 1.5(b), and copies of all writings, if any, stating other terms of engagement for legal services;

(4) Copies of all statements to clients and third persons showing the disbursement of funds or the delivery of property to them or on their behalves;

(5) Copies of all bills issued to clients;

(6) Records showing payments to any persons, not in the lawyer's regular employ, for services rendered or performed; and

(7) Paper copies or electronic copies of all bank statements and of all canceled checks.

(b) The records required by this Rule shall be maintained in accordance with one or more of the following recognized accounting methods: the accrual method, the cash basis method, or the income tax method. All such accounting methods shall be consistently applied. Bookkeeping

records may be maintained by computer provided they otherwise comply with this Rule and provided further that printed copies can be made on demand in accordance with this Rule. They shall be located at the principal Colorado office of the lawyer or of the lawyer's law firm.

(c) Upon the dissolution of a law firm, the lawyers who rendered legal services through the law firm shall make appropriate arrangements for the maintenance or disposition of records and client files in accordance with this Rule and Rule 1.16A. Upon the departure of a lawyer from a law firm, the departing lawyer and the lawyers remaining in the law firm shall make appropriate arrangements for the maintenance or disposition of records and client files in accordance with this Rule and Rule 1.16A.

(d) Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued by the Regulation Counsel in connection with proceedings pursuant to C.R.C.P. 251. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege of the lawyer's client.

Note: See comments following Rule 1.15A.

Rule 1.15E. Approved Institutions

(a) This Rule applies to each trust account that is subject to Rule 1.15B, other than a trust account that is maintained in other than an approved financial institution pursuant to the second sentence of Rule 1.15B(d).

(b) Each trust account shall be maintained at a financial institution that is approved by the Regulation Counsel, pursuant to the provisions and conditions contained in this Rule. The Regulation Counsel shall maintain a list of approved financial institutions, which it shall renew not less than annually. Offering a trust account or a COLTAF account is voluntary for financial institutions.

(c) The Regulation Counsel shall approve a financial institution for use for lawyers' trust accounts, including COLTAF accounts, if the financial institution files with the Regulation Counsel an agreement, in a form provided by the Regulation Counsel, with the following provisions and on the following conditions:

(1) The financial institution does business in Colorado;

(2) The financial institution agrees to report to the Regulation Counsel in the event a properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored. That agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty-days notice in writing to the Regulation Counsel.

(3) The financial institution agrees that all reports made by the financial institution shall be in the following format: (i) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (ii) in the case of an instrument that is presented against insufficient funds but that is honored, the report shall identify the financial institution, the lawyer or law firm for whom the account is maintained, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft

created thereby. Report of a dishonored instrument shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If no such time is provided by law for notice of dishonor, or if the financial institution has honored an instrument presented against insufficient funds, then the report shall be made within five banking days of the date of presentation of the instrument.

(4) The financial institution agrees to cooperate fully with the Regulation Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Regulation Counsel in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program.

(5) The financial institution agrees to cooperate with the COLTAF program and shall offer a COLTAF account to any lawyer or law firm who wishes to open one.

(6) With respect to COLTAF accounts, the financial institution agrees:

(A) To remit electronically to COLTAF monthly interest or dividends, net of allowable reasonable COLTAF fees as defined in subparagraph (c)(10) of this Rule, if any; and

(B) To transmit electronically with each remittance to COLTAF a statement showing, as to each COLTAF account, the name of the lawyer or law firm on whose account the remittance is sent; the account number; the remittance period; the rate or rates of interest or dividends applied; the account balance or balances on which the interest or dividends are calculated; the amount of interest or dividends paid; the amount and type of fees, if any, deducted; the amount of net earnings remitted; and such other information as is reasonably requested by COLTAF.

(7) The financial institution agrees to pay on any COLTAF account not less than (i) the highest interest or dividend rate generally available from the financial institution on non-COLTAF accounts when the COLTAF account meets the same eligibility requirements, if any, as the eligibility requirement for non-COLTAF accounts; or (ii) the rate set forth in subparagraph (c)(9) below. In determining the highest interest or dividend rate generally available from the financial institution to its non-COLTAF customers, the financial institution may consider factors customarily considered by the financial institution when setting interest or dividend rates for its non-COLTAF accounts, including account balances, provided that such factors do not discriminate between COLTAF accounts and non-COLTAF accounts. The financial institution may choose to pay on a COLTAF account the highest interest or dividend rate generally available on its comparable non-COLTAF accounts in lieu of actually establishing and maintaining the COLTAF account in the comparable highest interest or dividend rate product.

(8) A COLTAF account may be established by a lawyer or law firm and a financial institution as:

(A) A checking account paying preferred interest rates, such as market-based or indexed rates;

(B) A public funds interest-bearing checking account, such as an account used for other non-profit organizations or government agencies;

(C) An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or

(D) A business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U.S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States government) and may be established only with an approved institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is a fund maintained as a money market fund by an investment company registered under the Investment Company Act of 1940, as amended, which fund is qualified to be held out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).

(9) In lieu of a rate set forth in paragraph (c)(7)(i), the financial institution may elect to pay on all deposits in its COLTAF accounts, a benchmark rate, which COLTAF is authorized to set periodically, but not more frequently than every six months, to reflect an overall comparable rate offered by financial institutions in Colorado net of allowable reasonable COLTAF fees. Election of the benchmark rate is optional, and financial institutions may choose to maintain their eligibility by paying the rate set forth in paragraph (c)(7)(i).

(10) "Allowable reasonable COLTAF fees" are per-check charges, per-deposit charges, fees in lieu of minimum balances, federal deposit insurance fees, sweep fees, and reasonable COLTAF account administrative fees. The financial institution may deduct allowable reasonable COLTAF fees from interest or dividends earned on a COLTAF account, provided that such fees (other than COLTAF account administrative fees) are calculated and imposed in accordance with the approved institution's standard practice with respect to comparable non-COLTAF accounts. The financial institution agrees not to deduct allowable reasonable COLTAF fees accrued on one COLTAF account in excess of the earnings accrued on the COLTAF account for any period from the principal of any other COLTAF account or from interest or dividends accrued on any other COLTAF account. Any fee other than allowable reasonable COLTAF fees are the responsibility of, and the financial institution may charge them to, the lawyer or law firm maintaining the COLTAF account.

(11) Nothing contained in this Rule shall preclude the financial institution from paying a higher interest or dividend rate on a COLTAF account than is otherwise required by the financial institution's agreement with the Regulation Counsel or from electing to waive any or all fees associated with COLTAF accounts.

(12) Nothing in this Rule shall be construed to require the Regulation Counsel or any lawyer or law firm to make independent determinations about whether a financial institution's COLTAF account meets the comparability requirements set forth in paragraph (c)(7). COLTAF will make

such determinations and at least annually will inform Regulation Counsel of the financial institutions that are in compliance with the comparability provisions of this Rule.

(13) Each approved financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. The agreement entered into by a financial institution with the Regulation Counsel shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

Note: See comments following Rule 1.15A.