

ORIGINAL

Louisiana Attorney Disciplinary Board

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15-DB-006

12/22/2015

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JOSLYN RENEE ALEX

DOCKET NO. 15-DB-006

REPORT OF THE HEARING COMMITTEE #19

INTRODUCTION

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel ("ODC") against Joslyn Renee Alex ("Respondent"), bar roll number 18760. The formal charges consist of two counts. In the charges, ODC alleges that Respondent violated Rules of Professional Conduct 1.15(a), 1.15(b), 1.15(d), 8.4(c), and 8.4(d).¹

PROCEDURAL HISTORY

The formal charges were filed on March 11, 2015. Respondent filed an answer to the charges on May 6, 2015, through her counsel Jo Ann Nixon. The hearing of this matter was held on September 1, 2015. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Jo Ann Nixon appeared on behalf of Respondent.

For the following reasons, the hearing committee finds that the Respondent should be reprimanded, monitored for one (1) year, and sent to trust account school. She had no intention to and did not harm any client or member of the public. However, she was negligent in her management and documentation of activity in her trust account, which creates the potential for injury.

FORMAL CHARGES

The formal charges read, in pertinent part:

COUNT I

Pursuant to an ODC investigation into a complaint filed by Ms. Dorothy M. Davis on or about July 3, 2012 against the Respondent, Joslyn R. Alex, ODC performed an audit of the Respondent's IOLTA trust account xxxx1629 . The scope of the audit was designated to include the months of March 2010 to

¹ The text of the Rules is contained in the attached Appendix.

December 2010. The Respondent was deposed on May 28, 2013 and the accounting records for the audit time period were requested. Respondent submitted accounting records to ODC for review, which consisted of bank statements addressing account activity from April 2010 to December 2010, copies of canceled checks, and settlement statements. Although requested by ODC, the accounting records for March, 2010 were not provided by the Respondent.

After thorough review of the provided financial records, ODC's investigating auditor, Traci D. Fontenot, determined and concluded that the Respondent had misused and commingled client trust funds. The accounting records reflected inappropriate payments made from the trust account. Furthermore, Respondent failed to disburse attorney fees from the trust at the time the funds were earned. Additionally, Respondent had numerous accounting and procedural errors regarding the settlement documents she provided to ODC. In some instances, the statements contained mathematical errors, and in others, individuals received settlement funds with no evidence of an existing settlement or of a retainer having been deposited on the payee's behalf.

Respondent was provided the findings and conclusions of Ms. Fontenot and given the opportunity to respond to same. Respondent responded to the allegation of misuse of the trust account by suggesting that suspect transactions had taken place on the account without her authorization or permission. However, under Article I, Rule 1.15(a) of the Louisiana Rules of Professional Conduct, the Respondent is ultimately responsible for the appropriate and secure safeguarding of the trust contents. Therefore, Respondent bears culpability for irregularities contained in the trust accounting.

Regarding the allegation of commingling of funds, Respondent has acknowledged having knowingly left earned attorney fees to remain in the trust account after which time disbursement was proper and appropriate. Failure to disburse attorney fees timely is a violation of Rule 1.15(b). Respondent has alleged that attorney fees have since been paid, but has provided to ODC no evidence of such payments.

Regarding the submitted settlement statements, Respondent also acknowledges accounting and procedural errors. Settlement checks were written to parties with no settlement statements or other substantiating evidence to support the disbursement of funds. In other instances, funds were due and payable to clients, but no evidence was submitted to show that Respondent has complied with the requirements of Rule 1.15(d).

By failing, neglecting or refusing to properly police and diligently maintain her IOLTA trust account, and by failing to properly disperse funds from the trust account to the appropriate parties, Ms. Alex violated Rules 1.15(a); 1.15(b); and 1.15(d).

COUNT II

On or about October 27, 2012, Complainant Sheryl Williams retained Respondent to represent Shedrick Williams in a criminal matter. Complainant alleges that Respondent failed to appear for court on three separate occasions. Complainant terminated the representation on or about February 4, 2013.

Following the termination of representation, a fee dispute erupted between the Complainant and Respondent regarding unused retainer funds. The matter was tendered to binding arbitration for resolution. The matter of *Sheryl Williams v. Joslyn Alex, Esq.* Case No. 2013-054, was heard in arbitration on regular assignment on June 19, 2014.

The arbiter examined documents and heard witness testimony regarding the scope and diligence of the legal representation provided by the Respondent to the Williams'. The arbiter made note that the Respondent was ill-prepared for the proceeding, and provided little evidence to support her claims other than scant pleadings with no dates, signatures, or evidence of filing (fax or otherwise) .

A decision of *quantum meruit* was made by the arbiter, noting that Respondent was eligible for attorney fees until the time of representation termination, for cause, on February 4, 2013. Ms. Williams previously tendered Three Thousand Dollars (\$3,000.00) into the trust account of Respondent at the time of hire. The Respondent was entitled to an attorney fee of One Thousand Eight Hundred Dollars (\$1,800.00) for work performed. The remaining balance of Twelve Hundred Dollars (\$1,200.00) was to be refunded to Ms. Williams. Judgment was rendered, as such, in favor of Ms. Williams.

Respondent failed to tender to Ms. Williams the remaining retainer and judgment amount of \$1,200.00. Ms. Williams responded by filing a complaint with ODC on August 21, 2014. Notice of the ODC complaint was sent to Respondent, who responded to the complaint by suggesting she disagreed with the findings of fact, and ruling, of the arbiter. Her response to the complaint did not reflect that she had funded the judgment, or that she had any intention of doing so. ODC has received no further communication from the Respondent on the matter.

Respondent was ordered to refund the unused portion of the retainer to Ms. Williams, per the arbitration judgment. She has willfully refused to comply, constituting a conversion of the funds. By failing to refund the unused portion of the retainer despite the judgment, Ms. Alex has violated Rule 8.4(c) and Rule 8.4(d).

EVIDENCE

With regard to Count I, ODC called Tracy Fontenot, a forensic accountant previously employed by ODC. She is a 1994 graduate of LSU in accounting and had approximately 10 years of accounting and auditing experience when she performed the audit of Respondent's trust account. Ms. Fontenot reviewed Respondent's trust account records for the period of April through December of 2010 and requested copies of all settlement statements that corresponded to the activity in the trust account during that period. (Rec. pp. 39-40). Seven settlement statements were never produced to Ms. Fontenot even though deposits were made for each of the

seven clients. Respondent testified that some were lost due to computer malfunction and others, she could not remember, but she was unable to produce hard copies to ODC. (Rec. pp. 157-159). Ms. Fontenot's September 9, 2014 audit report with back-up and October 20, 2014 audit report, which addressed Respondent's responses to the September 9, 2014 report, were admitted without objection. (ODC #3).

Ms. Fontenot testified with regard to the following trust account transactions:

a. Christmas bonuses (\$400) were paid to Brian Eglund and Leila Willis. Respondent testified the checks were forgeries. (Rec. pp. 43-44). Ms. Fontenot conceded, in her October report, that these disbursements were not authorized by Respondent. (ODC #3, p. 66).

b. Dorothy Davis Settlement (ODC #3, pp. 45-46)

Ms. Fontenot testified that the settlement disbursement form indicated that court costs in the amount of \$2,005.53 were owed. However, there was no evidence that the court costs were paid within the bank records provided. Respondent testified that she paid the court costs but never provided proof of the payment after the audit nor did she submit proof of payment in the hearing. (Rec. pp. 44-45). ODC did not submit any statement or other documentary proof that the amount remained due and owing.

c. Loretta Woods Settlement (ODC #3, p. 51)

Respondent should have paid herself \$1901, but only paid herself \$1200, leaving \$701 earned by Respondent in the trust account. (Rec. 45-47)

d. Jocelyn Young Settlement (ODC #3, p. 52)

Attorney's fees on the settlement disbursement form indicated \$2,092 was earned by Respondent on this case. The bank records showed a total of \$5,500 was paid to Respondent in three payments of \$3,000 on 4/20/10, \$1,500 on 9/1/2010, and \$1,000 on 4/13/2010, resulting in a \$2400 overpayment of fees. (ODC #3, p. 40). Two checks for the same amount (\$195) were issued to Canal Radiology in April and September 2010. A payment of \$2,700 was made to Metropolitan Health Group on Ms. Young's behalf, but that amount was not included in the settlement disbursement form. (Rec, pp. 47-48). Finally, Ms. Young's settlement disbursement sheet showed amounts due to IOD, Incorporated (\$128.59) and the clerk of court (\$759), but there was no proof of payment in the bank records and Respondent has not come forward with proof of payment since the audit. (Rec. 47-50). Respondent testified that Ms. Young had several cases, and appointments at Canal Radiology often times carried the same charge. Respondent believes the payments were for different cases because the check numbers and dates were far apart. Usually checks for a settlement are issued sequentially. (Rec. pp. 191-197).

e. Sue Babineaux Settlement (ODC #3, p. 53)

The audit revealed an extra check in the amount of \$283 made payable to Respondent that was in addition to the amount earned listed on the settlement disbursement form. (Rec. p. 50).

f. Kendrick Williams Settlement (ODC #3, p. 54)

Ms. Fontenot testified that a mathematical error resulted in Mr. Williams being shorted \$.77. (Rec. p. 50). However, Ms. Fontenot's notes on the settlement disbursement form indicate that Respondent underpaid herself \$1.13.

g. Markell Lewis Settlement (ODC #3, p. 55)

Attorney fees of \$823.20 were earned but not paid. (Rec. p. 50-52).

h. Marcus Lewis Settlement (ODC #3, p. 56)

Amounts due to Canal Radiology (\$230) were not paid, and \$4500 in fees excess to the amount shown on the settlement disbursement form were paid to Respondent. The checks identified Mr. Lewis but no other deposit related to Mr. Lewis was within the audit period bank records. (Rec. pp. 52-53). Respondent testified she handled multiple cases for Mr. Lewis (Rec. p. 199).

i. Christopher Lee Settlement (ODC #3, p. 63)

Mr. Lee's settlement disbursement form did not match the bank records. According to the form, Lee should have been paid \$1,472.97, but he was paid \$7,014.37. Fees, third-party payments, and loan payments should have totaled \$7528.21, but canceled checks in the bank statements for these payments referencing Mr. Lee totaled \$6,660, which included providers not identified on the settlement disbursement form. (Rec. pp. 54-56). Respondent explained that she had three cases for Mr. Lee, one workers' compensation, a small personal injury case, and a criminal case, and that Lee paid for his criminal case with funds received from his personal injury case. (Rec. p. 137). The accounting was documented in the file. (Rec. p. 138). Respondent did not provide ODC all of the documentation supporting the payments. (Rec. pp. 197-202).

j. Lisa Knockum Settlement (ODC #3, p. 57)

Respondent earned a fee of \$5,075, but only paid herself \$3,000. Two third-party providers were not paid. (total \$339.60) The notes on the settlement disbursement

form show that loans in the amount of \$850 were not paid, but in testimony Ms. Fontenot suggested that \$500 may have been loaned to Ms. Knockum before her settlement. Ms. Fontenot also noted that two checks--one payable to Ms. Knockum and one payable to Respondent—had signatures that looked different from Respondent’s signature. (Rec. 56-58; ODC #3, p. 59, 60).

k. Enola Thomas Settlement

Two payments were made to Ms. Thomas with no record of a deposit. (Rec. p. 58). Respondent testified this was a succession case with a lien by the State on Ms. Thomas’ house when she passed. Respondent paid for repairs to the home out of the trust account. The deposits into the trust were made before the beginning of the audit period. (Rec. pp. 146-148).

l. Elizabeth Irvine Settlement (ODC #3, pp. 49-50)

Ms. Fontenot testified that another \$75.02 is owed to Ms. Irvine. (Rec. 60-61). We disagree. The settlement disbursement form itself contains mathematical errors, and Ms. Irvine was due \$15,598.76, rather than \$16,096.68, which was actually paid. The settlement disbursement form shows Respondent earned a fee of \$12,250 but Ms. Fontenot’s notes show that Respondent only paid herself \$11,500, an underpayment of \$750. Respondent overpaid the case preparation expense by \$60.06 - the form shows \$117.60 due but \$177.66 was paid. The \$75.02 is owed to the Respondent, not the client.

m. Larry Alex payments

Payments were made to Mr. Alex but no deposit was recorded during the audit period. (Rec. pp. 61-62). Respondent testified that Alex is a cousin and did not have

his own checking account. Consequently, she directed payments to his church, St. James Baptist Church, his brother, Alton Alex, and others. A settlement disbursement form had been prepared, but Respondent could not find it, and could not recall whether the contingency fee contract was provided to ODC. (Rec. pp. 154-155, 180-182).

n. Office Expenses

Three checks (total \$2,366) were issued directly from the trust account and indicated in the memo section that the funds were for office expenses. (Rec. p. 59). Fontenot acknowledged that these payments would be appropriate if authorized by the client and were disbursed after the settlement funds were deposited. (Rec. pp. 69-70).

o. Mortgage Payments of \$8,706.18 were made directly to or referenced AHMSI in the memo section. (Rec. p. 60). Respondent testified that the mortgage company believed she had overpaid her mortgage but that she knew the money had not been overpaid. She placed those funds in the trust account to hold until they realized their error and she would need to pay the money back. She also paid office expenses associated with the transaction. Since the overpayment came from the AHMSI's trust account, she placed those funds in her trust account. Respondent believed she was the client in this instance and opened a file on the matter. (Rec. pp. 148- 153). Further, she believed these funds belonged to other people. (Rec. pp. 179-180).

p. Line of Credit A payment of \$2,500 was made to Mid-South Bank. (Rec. p. 60). No explanation regarding this payment was provided by Respondent.

- q. Air Conditioning Repairs** A payment of \$120 to Dupuis Air Conditioning was made from the trust account. (Rec. p. 60). Respondent testified this was related to Enola Thomas. (Rec. p. 147).
- r. St. James Baptist Church** was paid \$200 from the Trust Account. (Rec. p. 60).
- s. Fees not associated with a case.** Ms. Fontenot identified payments in the amount of \$20,300 to Respondent or her firm that were not identified with any particular client or case. (Rec. p. 61). Respondent testified that she would issue checks for fees earned but not cash them and would not identify on the check the case to which it was related. She would keep the checks in the file and cash them as she needed the funds. (Rec. pp. 139-142). The earned fees could stay in the trust account thirty to sixty days or longer before deposited in the operating account. (Rec. pp. 144-145).
- t. Miscellaneous Checks lacking identifier or payee.**

Two checks payable to medical providers and two checks payable to individuals were not identified with any client. Two checks did not have payees. (ODC #3, p. 43; Rec. 62-63). The two individuals were clients, and Respondent believes the settlement sheets were stored on a computer that was malfunctioning. (Rec. p. 156).

Ms. Fontenot concluded that Respondent's funds were not held separate in her client trust account. Some funds were advanced to clients from the trust account before settlement funds were received, there were mathematical errors, some third-parties were not paid and she paid personal expenses through her trust account. She believed the audit showed commingling, conversion, misuse of the trust, and accounting errors. Ms. Fontenot could not recall any point when the trust account was overdrawn. (Rec. p. 76). Ms. Fontenot also concluded that in only

two instances, one for \$.77 and one for \$75.02, did the client not receive the full amount due to them. (Rec. p. 83).

Respondent testified that she did not know that other people were issuing checks on her trust account. Due to previous problems, she set up a computer generated check writing system, on a separate computer. After a settlement, her staff would prepare the breakdown of disbursements, she would type it up and generate the checks. (Rec. pp. 123-124). Once her staff was trained, she did not typically verify the breakdown. (Rec. p. 126). Sometimes, she would negotiate medical bills and reduce her fee, but would not necessarily note the changes on the settlement disbursement forms. (Rec. 128-129).

Respondent also testified that Metropolitan Health Group and Canal Radiology were related companies and that these companies had problems with their accounting protocols and system. Checks made payable to these companies were issued, but had not been cashed. (Rec. pp. 177-179, 188). Respondent's accountant confirmed the problems because she was involved in the research requested by these companies. (Rec. p. 217).

Respondent testified that she left earned fees in her trust account for two reasons: (1) her practice keeps her out of the office at least two days a week, and she prioritizes payments to clients and third-party providers; and (2) she has experienced theft by staff, who have forged operating account checks when they knew funds were available, *e.g.*, writing duplicate paychecks if the balance permits. (Rec. pp. 130-131). During the audit period, Respondent was reconciling her account once a year. (Rec. p. 135).

ODC also called Ms. Sheryl Williams, complainant in count II, as a witness. Williams hired Respondent to represent her son on criminal drug charges on referral from a friend. She testified that Respondent failed to appear at three court appearances and did not provide

paperwork to either her or her son. Ms. Williams sought the return of her fee. Respondent disputed the allegations and believed she had earned the fee paid.² The dispute was submitted to arbitration where Ms. Williams was awarded \$1,200 in late June, 2014. Ms. Williams filed a disciplinary complaint on August 21, 2014, approximately 60 days after the arbitration hearing and award, because she had not yet received payment. Respondent issued a check for \$1,300 on August 20, 2014, which appears to have cleared Respondent's account on August 28, 2014. (Exh. R-1). Even though she received the payment, Ms. Williams wanted to go forward with the complaint because she believed the award was insufficient. (Rec. p. 107-108). Respondent testified that although she was hired to defend Mr. Williams on the new drug charges, he had a revocation pending, and she had to represent him in that case as well to resolve the new charges. (Rec. p. 161). Respondent testified that she paid the arbitration award within the time allowed. (Rec. p. 162).

Respondent's case-in-chief consisted of the testimony of her accountant, Sandra Hampton, and her own testimony. Essentially, Respondent recognizes the problems with her accounting protocols, and has revised those procedures and will be engaging the services of her accountant on a regular basis to make sure both her trust and operating accounts are properly managed.

Ms. Hampton has owned and operated Sandra Hampton Accounting and Tax Services for 15 years. (Rec. pp. 206-208). She has known Respondent for longer, and reports that Respondent is active with her church and underprivileged youth in the community, serving as a role model. (Rec. pp. 209-211). Hampton reviewed the audit but made no comment. Instead,

² Respondent also disputed some of the factual statements regarding the representation of Mr. Williams, and the certified record of the criminal proceeding was admitted into evidence. (Exh. R-2).

Hampton focused on assisting Respondent in implementing safeguards to protect against theft and mismanagement of the accounts. (Rec. p. 213). Ms. Hampton testified that the following changes have been implemented:

1. Hampton reconciles the IOLTA account quarterly, as now required.
2. Respondent sends her bank statements to Hampton every month. (Rec. p. 216)
3. Hampton verifies all settlement disbursements, and copies of all checks are made before being mailed. (Rec. p. 217).
4. Settlement disbursement checks will be tracked, and Hampton will follow up on all stale checks (over 90 days). (Rec. p. 217).
5. Respondent now has an office separate from her home, limiting access of employees, and has file cabinets that can be locked. (Rec. p. 220).

In Hampton's opinion, these safeguards are appropriate and sufficient to protect the integrity of Respondent's trust account.

Respondent also testified that no one else has access to her trust account checkbook. (Rec. p. 241). She has opened a separate account for her fees. (Rec. p. 244). She would like to attend Trust Account School. (Rec. pp. 245, 249).

FINDINGS OF FACT

COUNT I

The committee finds that no client funds were wrongfully withheld. ODC's forensic accountant concluded that in two cases, client funds were not paid in the amount of \$.77 and \$75.02. However, in the Kendrick Williams settlement, the amount owed to the client was paid in full, and it was Respondent who was underpaid by \$1.13. Similarly, in the Elizabeth Irvine matter, the plaintiff was paid the amounts owed according to the settlement disbursement form, but was actually owed less. The same form with Ms. Fontenot's notes indicate Respondent

underpaid herself \$689.95. Therefore, we disagree with Ms. Fontenot's conclusion that \$75.02 of client funds were not paid. Instead, those funds are due to the Respondent.

ODC has failed to prove, by clear and convincing evidence, that third party providers were not paid amounts due. Respondent's testimony regarding the health care providers' own accounting problems was corroborated by her accountant, Ms. Hampton. With regard to court costs in the Dorothy Davis matter, the only evidence that this was not paid was the absence of bank records during the audit period showing the check cleared Respondent's account. Respondent testified that the court costs were paid but offered no documentation. ODC failed to prove by clear and convincing evidence that the court costs remain outstanding.

The committee does find that the accounting protocols and methods utilized by Respondent were negligent. Checks were written without identifying the case with which it was associated, and the records lacked proper documentation distinguishing multiple cases for a single client. While Respondent claims to have accounted separately within the files for each case, that information was not introduced at the hearing. While Respondent had explanations for some of the discrepancies noted in the audit, much of which depended on documentation outside of the audit period, that documentation was not provided. Respondent used the trust account to hold her earned fees and accounted for those fees with checks issued in increments to be cashed as needed.

Nevertheless, Respondent was a credible witness, and the committee believes her explanations and benign intentions. Furthermore, Respondent, with the assistance of Ms. Hampton, has implemented accounting procedures and protocols that should remedy the lack of documentation and confusion that resulted from her 2010 accounting practices.

COUNT II

Ms. Williams and Respondent developed a fee dispute that was submitted to arbitration. The arbitration took place June 19, 2014, and the award was rendered on June 26, 2014. The arbitrator awarded Ms. Williams \$1,200. Respondent tendered the award plus \$100 to Ms. Williams by check dated August 20, 2014, 55 days after the award was granted. The arbitration award does not contain a deadline for payment, and neither party has provided the committee with authority establishing a deadline for payment. Neither party was happy with the arbitrator's award. The complaint focused on Ms. Williams' unhappiness with the arbitrator's award and Respondent. The charges, however, focused on the delay in payment or rather allegations that Respondent did not pay the arbitration award.

RULES VIOLATED

COUNT I

The committee finds that Respondent negligently violated Rule 1.15(a) and 1.15(b). Respondent failed to properly account for and remove fees earned from her trust account. While checks for her earned fees were issued, they were not cashed until later, as the need arose for expenses out of the operating account to be paid. We do not find any violation of Rule 1.15(d). ODC failed to prove, by clear and convincing evidence, that Respondent failed to promptly deliver to the client or third persons funds that the client or third person was entitled to receive.

COUNT II

Respondent did not violate rules 8.4(c) or 8.4(d) with respect to Count II. The 55 day delay in funding an arbitration award does not constitute conduct involving dishonesty, fraud, deceit or misrepresentation, nor is it conduct that is prejudicial to the administration of justice.

SANCTION

Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

The Louisiana Supreme Court also relies on the *ABA Standards for Imposing Lawyer Sanctions* ("ABA Standards") to determine the baseline sanction. Rule 1.15 involves duties to both the client and the public. We find that Respondent acted negligently, but did harm or injure any client or third party. However, the negligent accounting introduces potential injury to both clients and third parties and Respondent herself. The baseline sanction for negligence in dealing with client property and potential injury to a client is reprimand. *ABA Standards for Imposing Lawyer Sanctions 4.13*. Aggravating factors include a prior disciplinary offense in 2003 related to management of Respondent's trust account. Additionally, Respondent has substantial experience with the practice of law. Mitigating factors include an absence of a dishonest or selfish motive, timely good faith effort to rectify the negligence in her accounting, remorse and remoteness of prior offense. The balance of aggravating and mitigating factors support no deviation from the baseline sanction. Therefore, the committee recommends that Respondent be reprimanded, required to attend trust account school, and be assigned a monitor for one (1) year to confirm that the accounting protocols to which Respondent and Ms. Hampton testified are implemented and are sufficient to maintain the integrity of Respondent's trust account.

CONCLUSION

Respondent's testimony was sincere and made clear that she made efforts to properly manage her trust account. However, the documentation was insufficient, which can lead to

confusion and mistakes. While no client or third party provider was harmed during the audit period, absent improvement, the potential for injury is present. Nowhere was there any indication that Respondent intended to steal, convert or harm any client or member of the public. Instead, education and qualified assistance, and the implementation of both, is the appropriate remedy in this case.

Lafayette, Louisiana, this 21 day of December, 2015.

**Louisiana Attorney Disciplinary Board
Hearing Committee #19**

**Melissa A. Theriot, Committee Chair
Owen M. Goudelocke, Lawyer Member
Elaine R. Dill, Public Member**


BY: Melissa A. Theriot, Committee Chair
FOR THE COMMITTEE

APPENDIX

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. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. 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 five 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 or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

(c) ...

(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. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. 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. ...

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

(a) ...

(b) ...

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice; ...