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W/OUT REDLINE – October 19, 2009

RULE 1.15 Safekeeping Property

(a) Required Accounts. All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses:

(1) shall be deposited in one or more identifiable trust accounts; or

(2) placed in a safe deposit box or other place of safekeeping as soon as practicable;

(3) for lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held; and

(4) no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in trust until the dispute is resolved and there is an accounting and severance of their interests. Any portion belonging to the lawyer or law firm must be withdrawn promptly unless those monies are disputed.

(b) Fiduciary. For purposes of this Rule, the term “fiduciary” includes personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

(c) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client’s funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

44 (3) maintain complete records of all funds, securities, and other
45 properties of a client coming into the possession of the lawyer and render
46 appropriate accountings to the client regarding them;

47
48 (4) promptly pay or deliver to the client or another as requested by
49 such person the funds, securities, or other properties in the possession of the
50 lawyer that such person is entitled to receive; and

51
52 (5) not disburse funds or use property of a client or third party
53 without their consent or convert or misappropriate funds or property of a
54 client or third party, except as directed by a tribunal.

55
56 (d) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain
57 the following books and records demonstrating compliance with this Rule:

58
59 (1) Cash receipts and disbursements journals for each trust account,
60 including entries for receipts, disbursements, and transfers, and also
61 including, at a minimum: an identification of the client matter; the date of
62 the transaction; the name of the payor or payee; and the manner in which
63 trust funds were received, disbursed, or transferred from an account.

64
65 (2) A subsidiary ledger containing a separate entry for each client,
66 other person, or entity from whom money has been received in trust.

67 The ledger should:

68 (i) clearly identify the client or matter, including the date of the
69 transaction and the payor or payee and the means or methods by
70 which trust funds were received, disbursed or transferred; and
71

72 (ii) any unexpended balance.
73

74
75 (3) In the case of funds or property held by a lawyer as a fiduciary,
76 the required books and records shall include an annual summary of all
77 receipts and disbursements and changes in assets comparable in detail to an
78 accounting that would be required of a court supervised fiduciary in the
79 same or similar capacity; including all source documents sufficient to
80 substantiate the annual summary.
81

82
83 (4) All records subject to this Rule shall be preserved for at least five
84 calendar years after termination of the representation.

85
86 (e) Required Trust Accounting Procedures. In addition to the requirements
87 set forth in Rule 1.15 (a) through (c), the following minimum trust accounting
88 procedures are applicable to all trust accounts.
89

90 **(1) Insufficient Fund Reporting. All accounts are subject to the**
91 **requirements and regulations of insufficient fund check reporting as**
92 **regulated by the Regulations for the Approval of Financial Institutions as a**
93 **Depository for Attorney Trust Accounts in Virginia.**

94
95 **(2) Deposits. All receipts of trust money shall be deposited intact.**
96 **Mixed trust and non-trust funds shall be deposited intact into the trust fund**
97 **and the non-trust portion should be withdrawn upon the clearing of the**
98 **mixed fund deposit instrument. All such deposits should include a detailed**
99 **deposit slip or record that sufficiently identifies each item.**

100
101 **(3) Reconciliations.**

102
103 **(i) At least quarterly a reconciliation shall be made that reflects**
104 **the trust account balance for the client or other entity.**

105
106 **(ii) A monthly reconciliation shall be made of the cash balance**
107 **that is derived from the cash receipts journal, cash disbursements**
108 **journal, the trust account checkbook balance and the trust account**
109 **bank statement balance.**

110
111 **(iii) At least quarterly, a reconciliation shall be made that**
112 **reconciles the cash balance from (e)(3)(ii) above and the subsidiary**
113 **ledger balance from (e)(3)(i).**

114
115 **(iv) Reconciliations must be approved by a lawyer in the law**
116 **firm.**

117
118 **(4) The purpose of all receipts and disbursements of trust funds**
119 **reported in the trust journals and ledgers shall be fully explained and**
120 **supported by adequate records.**

121
122 **COMMENT**

123
124 [1] A lawyer should hold property of others with the care required of a
125 professional fiduciary. Securities should be kept in a safe deposit box, except when some
126 other form of safekeeping is warranted by special circumstances. All property which is
127 the property of clients or third persons should be kept separate from the lawyer's business
128 and personal property and, if monies, in one or more trust accounts. Separate trust
129 accounts may be warranted when administering estate monies or acting in similar
130 fiduciary capacities.

131
132 [2] Separation of the funds of a client from those of the lawyer not only serves to
133 protect the client but also avoids even the appearance of impropriety, and therefore
134 commingling of such funds should be avoided.

135

136 [2a] In relation to (c)(5) consent can be inferred from the engagement agreement
137 or any consequential agreement between the lawyer and the client regarding the
138 disbursement of fees; i.e.; when earned fees are routinely withdrawn from the lawyer's
139 trust account upon an accounting to the client; when costs and expenses of litigation are
140 routinely withdrawn; or when other fees/costs or expenses are agreed upon in advance.

141

142 [3] Lawyers often receive funds from third parties from which the lawyer's fee
143 will be paid. If there is risk that the client may divert the funds without paying the fee,
144 the lawyer is not required to remit the portion from which the fee is to be paid. However,
145 a lawyer may not hold funds to coerce a client into accepting the lawyer's contention.
146 The disputed portion of the funds should be kept in trust and the lawyer should suggest
147 means for prompt resolution of the dispute, such as arbitration or mediation. The
148 undisputed portion of the funds shall be promptly distributed.

149

150 [4] Third parties, such as a client's creditors, may have just claims against funds
151 or other property in a lawyer's custody. A lawyer may have a duty under applicable law
152 to protect such third-party claims against wrongful interference by the client, and
153 accordingly may refuse to surrender the property to the client. However, a lawyer should
154 not mediate or negotiate a dispute between the client and the third party.

155

156 [5] The obligations of a lawyer under this Rule are independent of those arising
157 from activity other than rendering legal services. For example, a lawyer who serves as an
158 escrow agent is governed by the applicable law relating to fiduciaries even though the
159 lawyer does not render legal services in the transaction.

160

161 [6] Nothing in this Rule is intended to prohibit an attorney from using electronic
162 checking for his trust account so long as all requirements in this Rule are fulfilled. It is
163 the lawyer's responsibility to assure that complete and accurate records of the receipt and
164 disbursement of entrusted property are maintained in accordance with this rule. Many
165 businesses are now converting paper checks to automated clearinghouse (ACH) debits.
166 Authorized ACH debits that are electronic transfers of funds (in which no checks are
167 involved) are allowed provided the lawyer maintains a record of the transaction as
168 required by this rule. The record, whether consisting of the instructions or authorization
169 to debit the account, a record or receipt from the financial institution, or the lawyer's
170 independent record of the transaction, must show the amount, date, recipient of the
171 transfer or disbursement, and the name of the client or other person to whom the funds
172 belong.

173

174

175 **PRIOR RULE COMPARISON**

176

177 This rule is substantially the same as the original Rule 1.15 adopted January 1, 2000
178 except that the language has been substantially simplified for ease of understanding and
179 the portions regarding the Financial Institutions duties redacted as they are appropriately
180 incorporated into the “Trust Account Notification Agreement” signed by all Virginia
181 approved financial institutions.

182

183 **COMMITTEE COMMENTARY**

184

185 The Committee chose to modify the rule for ease of understanding and enforcement with
186 no substantive changes to a lawyer’s safekeeping property and recordkeeping
187 requirements.

188

(RED-LINE DRAFT – 10-19-09)

RULE 1.15 Safekeeping Property

(a) Required Accounts. All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses;

~~(1) shall be deposited in one or more identifiable ~~eserow~~trust accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows;~~ or

~~(2) placed in a safe deposit box or other place of safekeeping as soon as practicable;~~

~~(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or~~

~~(3) for lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held; and~~

~~(2)(4) no funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must shall be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. except as follows:~~

~~(b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and 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.~~

~~(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or~~

~~(eii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in trust until the dispute is resolved and there is an accounting and severance of their interests. Any portion belonging to the lawyer or law firm must be withdrawn promptly unless those monies are disputed.~~

44 (b) Fiduciary. For purposes of this Rule, the term “fiduciary” includes personal
45 representative, trustee, receiver, guardian, committee, custodian and attorney-in-
46 fact ~~and anytime the lawyer is holding funds on behalf of another.~~

47
48 (c) Specific Duties. A lawyer shall:

49
50 (1) promptly notify a client of the receipt of the client’s funds, securities,
51 or other properties;

52
53 (2) identify and label securities and properties of a client, or those held by
54 a lawyer as a fiduciary, promptly upon receipt ~~and place them in a safe deposit~~
55 ~~box or other place of safekeeping as soon as practicable;~~

56
57 (3) maintain complete records of all funds, securities, and other properties
58 of a client coming into the possession of the lawyer and render appropriate
59 accountings to the client regarding them; ~~and;~~

60
61 (4) promptly pay or deliver to the client or another as requested by such
62 person the funds, securities, or other properties in the possession of the lawyer
63 ~~which~~ that such person is entitled to receive; ~~and .~~

64
65 ~~(d) Funds, securities or other properties held by a lawyer or law firm as a~~
66 ~~fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm~~
67 ~~shall not commingle the assets of such fiduciary accounts in a common account~~
68 ~~(including a book-entry custody account), except in the following cases:~~

69
70 ~~(1) funds may be maintained in a common escrow account subject to the~~
71 ~~provisions of Rule 1.15(a) and (c) in the following cases:~~

72
73 ~~(i) funds that will likely be disbursed or distributed within thirty~~
74 ~~(30) days of deposit or receipt;~~

75
76 ~~(ii) funds of \$5,000.00 or less with respect to each trust or other~~
77 ~~fiduciary relationship;~~

78
79 ~~(iii) funds held temporarily for the purposes of paying insurance~~
80 ~~premiums or held for appropriate administration of trusts otherwise funded~~
81 ~~solely by life insurance policies; or~~

82
83 ~~(iv) trusts established pursuant to deeds of trust to which the~~
84 ~~provisions of Code of Virginia Section 55-58 through 55-67 are~~
85 ~~applicable;~~

86
87 (5) not disburse funds or use property of a client or third party without
88 their consent or convert or misappropriate funds or property of a client or third
89 party, except as directed by a tribunal.

90
91 (d) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the
92 following books and records demonstrating compliance with this Rule:

93
94 (1) Cash receipts and disbursements journals for each trust account,
95 including entries for receipts, disbursements, and transfers, and also including, at
96 a minimum: an identification of the client matter; the date of the transaction; the
97 name of the payor or payee; and the manner in which trust funds were received,
98 disbursed, or transferred from an account.

99
100 (2) A subsidiary ledger containing a separate entry for each client, other
101 person, or entity from whom money has been received in trust.

102 The ledger should:

103
104
105 (i) clearly identify the client or matter, including the date of the
106 transaction and the payor or payee and the means or methods by which
107 trust funds were received, disbursed or transferred; and

108
109 (ii) any unexpended balance.

110
111 ~~(2) funds, securities, or other properties may be maintained in a common~~
112 ~~account:~~

113 ~~(i) where a common account is authorized by a will or trust~~
114 ~~instrument;~~

115
116 ~~(ii) where authorized by applicable state or federal laws or~~
117 ~~regulations or by order of a supervising court of competent jurisdiction; or~~

118
119 ~~(iii) where (a) a computerized or manual accounting system is~~
120 ~~established with record-keeping, accounting, clerical and administrative~~
121 ~~procedures to compute and credit or charge to each fiduciary interest its~~
122 ~~pro-rata share of common account income, expenses, receipts and~~
123 ~~disbursements and investment activities (requiring monthly balancing and~~
124 ~~reconciliation of such common accounts), (b) the fiduciary at all times~~
125 ~~shows upon its records the interests of each separate fiduciary interest in~~
126 ~~each fund, security or other property held in the common account, the~~
127 ~~totals of which assets reconcile with the totals of the common account, (c)~~
128 ~~all the assets comprising the common account are titled or held in the~~
129 ~~name of the common account, and (d) no funds or property of the lawyer~~
130 ~~or law firm or funds or property held by the lawyer or the law firm other~~
131 ~~than as a fiduciary are held in the common account.~~

132
133 (3) In the case of funds or property held by a lawyer as a fiduciary, the
134 required books and records shall include an annual summary of all receipts and
135 disbursements and changes in assets comparable in detail to an accounting that

136 would be required of a court supervised fiduciary in the same or similar capacity;
137 including all source documents sufficient to substantiate the annual summary.

138
139 For purposes of this Rule, the term "fiduciary" includes only personal
140 representative, trustee, receiver, guardian, committee, custodian and attorney in
141 fact.

142 (4) All records subject to this Rule shall be preserved for at least five
143 calendar years after termination of the representation.

144
145 ~~(e) Record Keeping Requirements, Required Books and Records. As a minimum~~
146 ~~requirement every lawyer engaged in the private practice of law in Virginia, hereinafter~~
147 ~~called "lawyer," shall maintain or cause to be maintained, on a current basis, books and~~
148 ~~records which establish compliance with Rule 1.15(a) and (e). Whether a lawyer or law~~
149 ~~firm maintains computerized records or a manual accounting system, such system must~~
150 ~~produce the records and information required by this Rule.~~

151
152 (1) ~~In the case of funds held in an escrow account subject to this Rule, the~~
153 ~~required books and records include:~~

154
155 (i) ~~a cash receipts journal or journals listing all funds received, the~~
156 ~~sources of the receipts and the date of receipts. Checkbook entries of~~
157 ~~receipts and deposits, if adequately detailed and bound, may constitute a~~
158 ~~journal for this purpose. If separate cash receipts journals are not~~
159 ~~maintained for escrow and non-escrow funds, then the consolidated cash~~
160 ~~receipts journal shall contain separate columns for escrow and non-~~
161 ~~escrow receipts;~~

162
163 (ii) ~~a cash disbursements journal listing and identifying all~~
164 ~~disbursements from the escrow account. Checkbook entries of~~
165 ~~disbursements, if adequately detailed and bound, may constitute a journal~~
166 ~~for this purpose. If separate disbursements journals are not maintained for~~
167 ~~escrow and non-escrow disbursements then the consolidated~~
168 ~~disbursements journal shall contain separate columns for escrow and non-~~
169 ~~escrow disbursements;~~

170
171 (iii) ~~subsidiary ledger. A subsidiary ledger containing a separate~~
172 ~~account for each client and for every other person or entity from whom~~
173 ~~money has been received in escrow shall be maintained. The ledger~~
174 ~~account shall by separate columns or otherwise clearly identify escrow~~
175 ~~funds disbursed, and escrow funds balance on hand. The ledger account~~
176 ~~for a client or a separate subsidiary ledger account for a client shall clearly~~
177 ~~indicate all fees paid from trust accounts;~~

178 (iv) ~~reconciliations and supporting records required under this~~
179 ~~Rule;~~

~~(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.~~

(e) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements and regulations of insufficient fund check reporting as regulated by the Regulations for the Approval of Financial Institutions as a Depository for Attorney Trust Accounts in Virginia.

(2) Deposits. All receipts of trust money shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion should be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for the client or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (e)(3)(ii) above and the subsidiary ledger balance from (e)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

~~(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:~~

~~(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to~~

226 determine whether the lawyer is properly discharging the obligations of
227 the fiduciary relationship;

228
229 (ii) original source documents sufficient to substantiate and, when
230 necessary, to explain the annual summary required under (i), above;

231
232 (iii) the records required under this paragraph shall be preserved
233 for at least five full calendar years following the termination of the
234 fiduciary relationship.

235
236 ~~(f) Required Escrow Accounting Procedures. The following minimum escrow~~
237 ~~accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and~~
238 ~~(e) by lawyers practicing in Virginia.~~

239
240 (1) ~~Insufficient fund check reporting.~~

241
242 (i) ~~Clearly identified escrow accounts required. A lawyer or law~~
243 ~~firm shall deposit all funds held in escrow in a clearly identified account,~~
244 ~~and shall inform the financial institution in writing of the purpose and~~
245 ~~identify of such account. Lawyer escrow accounts shall be maintained~~
246 ~~only in financial institutions approved by the Virginia State Bar, except as~~
247 ~~otherwise expressly directed in writing by the client for whom the funds~~
248 ~~are being deposited;~~

249
250 (ii) ~~Overdraft notification agreement required. A financial~~
251 ~~institution shall be approved as a depository for lawyer escrow accounts if~~
252 ~~it shall file with the Virginia State Bar an agreement, in a form provided~~
253 ~~by the Bar, to report to the Virginia State Bar in the event any instrument~~
254 ~~which would be properly payable if sufficient funds were available, is~~
255 ~~presented against a lawyer escrow account containing insufficient funds,~~
256 ~~irrespective of whether or not the instrument is honored. The Virginia~~
257 ~~State Bar shall establish rules governing approval and termination of~~
258 ~~approved status for financial institutions. The Virginia State Bar shall~~
259 ~~maintain and publish from time to time a list of approved financial~~
260 ~~institutions.~~

261
262 No escrow account shall be maintained in any financial institution which
263 does not agree to make such reports. Any such agreement shall apply to
264 all branches of the financial institution and shall not be canceled by the
265 financial institution except upon thirty (30) days notice writing to the
266 Virginia State Bar, or as otherwise agreed to by the Virginia State Bar.
267 Any such agreement may be canceled without prior notice by the Virginia
268 State Bar if the financial institution fails to abide by the terms of the
269 agreement;

270

271 (iii) ~~Overdraft reports. The overdraft notification agreement shall~~
272 ~~provide that all reports made by the financial institution shall be in the~~
273 ~~following format:~~

274
275 (a) ~~in the case of a dishonored instrument, the report shall~~
276 ~~be identical to the overdraft notice customarily forwarded to the~~
277 ~~depositor, and should include a copy of the dishonored instrument,~~
278 ~~if such a copy is normally provided to depositors;~~

279
280 (b) ~~in the case of instruments that are presented against~~
281 ~~insufficient funds but which instruments are honored, the report~~
282 ~~shall identify the financial institution, the lawyer or law firm, the~~
283 ~~account name, the account number, the date of presentation for~~
284 ~~payment, and the date paid, as well as the amount of the overdraft~~
285 ~~created thereby;~~

286
287 (c) ~~such reports shall be made simultaneously with and~~
288 ~~within the time provided by law for notice of dishonor to the~~
289 ~~depositor, if any. If an instrument presented against insufficient~~
290 ~~funds is honored, then the report shall be made within five (5)~~
291 ~~banking days of the date of presentation for payment against~~
292 ~~insufficient funds;~~

293
294 (iv) ~~Financial institution cooperation. In addition to making the~~
295 ~~reports specified above, approved financial institutions shall agree to~~
296 ~~cooperate fully with the Virginia State Bar and to produce any lawyer~~
297 ~~escrow account or other account records upon receipt of a subpoena~~
298 ~~therefor.~~

299
300 ~~A financial institution may charge for the reasonable costs of producing~~
301 ~~the records required by this Rule.~~

302
303 (v) ~~Lawyer cooperation. Every lawyer or law firm shall be~~
304 ~~conclusively deemed to have consented to the reporting and production~~
305 ~~requirements mandated by this Rule;~~

306
307 (vi) ~~Definitions. "Lawyer" means a member of the Virginia State~~
308 ~~Bar, any other lawyer admitted to regular or limited practice in this State,~~
309 ~~and any member of the bar of any other jurisdiction while engaged, pro~~
310 ~~haec vice or otherwise, in the practice of law in Virginia;~~

311
312 ~~"Lawyer escrow account" or "escrow account" means an account~~
313 ~~maintained in a financial institution for the deposit of funds received or~~
314 ~~held by a lawyer or law firm on behalf of a client;~~

315

316 ~~“Client” includes any individual, firm, or entity for which a lawyer~~
317 ~~performs any legal service, including acting as an escrow agent or as legal~~
318 ~~representative of a fiduciary, but not as a fiduciary. The term does not~~
319 ~~include a public or private entity of which a lawyer is a full-time~~
320 ~~employee;~~

321
322 ~~“Dishonored” shall refer to instruments which have been dishonored~~
323 ~~because of insufficient funds as defined above;~~

324
325 ~~“Financial institution” and “bank” include regulated state or federally~~
326 ~~chartered banks, savings institutions and credit unions which have signed~~
327 ~~the approved Notification Agreement, which are licensed and authorized~~
328 ~~to do business and in which the deposits are insured by an agency of the~~
329 ~~Federal Government;~~

330
331 ~~“Insufficient Funds” refers to an overdraft in the commonly accepted~~
332 ~~sense of there being an insufficient balance as shown on the bank’s~~
333 ~~accounting records; and does not include funds which at the moment may~~
334 ~~be on deposit, but uncollected;~~

335
336 ~~“Law firm” includes a partnership of lawyers, a professional or nonprofit~~
337 ~~corporation of lawyers, and a combination thereof engaged in the practice~~
338 ~~of law. In the case of a law firm with offices in this State and in other~~
339 ~~jurisdictions, these Rules apply to the offices in this State, to escrow~~
340 ~~accounts in other jurisdictions holding funds of clients who are located in~~
341 ~~this State, and to escrow accounts in other jurisdictions holding client~~
342 ~~funds from a transaction arising in this State;~~

343
344 ~~“Notice of Dishonor” refers to the notice which, pursuant to Uniform~~
345 ~~Commercial Code Section 3-508(2), must be given by a bank before its~~
346 ~~midnight deadline and by any other person or institution before midnight~~
347 ~~of the third business day after dishonor or receipt of notice of dishonor.~~
348 ~~As generally used hereunder, the term notice of dishonor shall refer only~~
349 ~~to dishonor for the purpose of insufficient funds, or because the drawer of~~
350 ~~the bank has no account with the depository institution;~~

351
352 ~~“Properly payable” refers to an instrument which, if presented in the~~
353 ~~normal course of business, is in a form requiring payment under Uniform~~
354 ~~Commercial Code Section 4-104, if sufficient funds were available.~~

355
356 ~~(2) Deposits. All receipts of escrow money shall be deposited intact and a~~
357 ~~retained duplicate deposit slip or other such record shall be sufficiently detailed to~~
358 ~~show the identity of each item;~~

359
360 ~~(3) Deposit of mixed escrow and non-escrow funds other than fees and~~
361 ~~retainers. Mixed escrow and non-escrow funds shall be deposited intact to the~~

362 ~~escrow account. The non-escrow portion shall be withdrawn upon the clearing of~~
363 ~~the mixed fund deposit instrument;~~

364
365 ~~(4) Periodic trial balance. A regular periodic trial balance of the~~
366 ~~subsidiary ledger shall be made at least quarter annually, within 30 days after the~~
367 ~~close of the period and shall show the escrow account balance of the client or~~
368 ~~other person at the end of each period.~~

369
370 ~~(i) The total of the trial balance must agree with the control figure~~
371 ~~computed by taking the beginning balance, adding the total of monies~~
372 ~~received in escrow for the period and deducting the total of escrow monies~~
373 ~~disbursed for the period; and~~

374
375 ~~(ii) The trial balance shall identify the preparer and be approved by~~
376 ~~the lawyer or one of the lawyers in the law firm.~~

377
378 ~~(5) Reconciliations:~~

379
380 ~~(i) A monthly reconciliation shall be made at month end of the~~
381 ~~cash balance derived from the cash receipts journal and cash~~
382 ~~disbursements journal total, the escrow account checkbook balance, and~~
383 ~~the escrow account bank statement balance;~~

384 ~~(ii) A periodic reconciliation shall be made at least quarter~~
385 ~~annually, within 30 days after the close of the period, reconciling cash~~
386 ~~balances to the subsidiary ledger trial balance;~~

387
388 ~~(iii) Reconciliations shall identify the preparer and be approved by~~
389 ~~the lawyer or one of the lawyers in the law firm.~~

390
391 ~~(6) Receipts and disbursements explained. The purpose of all receipts and~~
392 ~~disbursements of escrow funds reported in the escrow journals and subsidiary~~
393 ~~ledgers shall be fully explained and supported by adequate records.~~

394
395 **COMMENT**

396
397 [1] A lawyer should hold property of others with the care required of a
398 professional fiduciary. Securities should be kept in a safe deposit box, except when some
399 other form of safekeeping is warranted by special circumstances. All property which is
400 the property of clients or third persons should be kept separate from the lawyer's business
401 and personal property and, if monies, in one or more trust accounts. Separate trust
402 accounts may be warranted when administering estate monies or acting in similar
403 fiduciary capacities.

404
405 [2] Separation of the funds of a client from those of the lawyer not only serves to
406 protect the client but also avoids even the appearance of impropriety, and therefore
407 commingling of such funds should be avoided.

408
409 [2a] In relation to (c)(5) consent can be inferred from the engagement agreement
410 or any consequential agreement between the lawyer and the client regarding the
411 disbursement of fees; i.e.; when earned fees are routinely withdrawn from the lawyer's
412 trust account upon an accounting to the client; when costs and expenses of litigation are
413 routinely withdrawn; or when other fees/costs or expenses are agreed upon in advance.
414

415 [3] Lawyers often receive funds from third parties from which the lawyer's fee
416 will be paid. If there is risk that the client may divert the funds without paying the fee,
417 the lawyer is not required to remit the portion from which the fee is to be paid. However,
418 a lawyer may not hold funds to coerce a client into accepting the lawyer's contention.
419 The disputed portion of the funds should be kept in trust and the lawyer should suggest
420 means for prompt resolution of the dispute, such as arbitration or mediation. The
421 undisputed portion of the funds shall be promptly distributed.
422

423 [4] Third parties, such as a client's creditors, may have just claims against funds
424 or other property in a lawyer's custody. A lawyer may have a duty under applicable law
425 to protect such third-party claims against wrongful interference by the client, and
426 accordingly may refuse to surrender the property to the client. However, a lawyer should
427 not ~~unilaterally assume to arbitrate mediate or negotiate~~ a dispute between the client and
428 the third party.
429

430 [5] The obligations of a lawyer under this Rule are independent of those arising
431 from activity other than rendering legal services. For example, a lawyer who serves as an
432 escrow agent is governed by the applicable law relating to fiduciaries even though the
433 lawyer does not render legal services in the transaction.
434

435 ~~[6] For purposes of paragraph (c)(2)(ii) of this Rule, where a bank provides~~
436 ~~electronic confirmation of checks written on the trust account, the lawyer need not obtain~~
437 ~~or maintain the original canceled checks. Nothing in this Rule is intended to prohibit an~~
438 ~~attorney from using electronic checking for his trust account so long as all requirements~~
439 ~~in this Rule are fulfilled. It is the lawyer's responsibility to assure that complete and~~
440 ~~accurate records of the receipt and disbursement of entrusted property are maintained in~~
441 ~~accordance with this rule. Many businesses are now converting paper checks to~~
442 ~~automated clearinghouse (ACH) debits. Authorized ACH debits that are electronic~~
443 ~~transfers of funds (in which no checks are involved) are allowed provided the lawyer~~
444 ~~maintains a record of the transaction as required by this rule. The record, whether~~
445 ~~consisting of the instructions or authorization to debit the account, a record or receipt~~
446 ~~from the financial institution, or the lawyer's independent record of the transaction, must~~
447 ~~show the amount, date, recipient of the transfer or disbursement, and the name of the~~
448 ~~client or other person to whom the funds belong.~~
449
450

451 | ~~VIRGINIA CODE~~ PRIOR RULE COMPARISON

452

453 | Paragraph (a) is substantially the same as DR 9-102(A).

454

455 | Paragraph (b) adopts the language of *ABA Model Rule 1.15(c)*.

456

457 | Paragraph (c) is identical to DR 9-102(B).

458

459 | Paragraph (d) is new and has no counterpart in the *Virginia Code* or *ABA Model Rules*.

460

461 | Paragraph (e)(1) is substantially the same as DR 9-103(A). Paragraph (e)(2) is new,

462

adding requirements for lawyers handling funds as fiduciaries.

463

464

Paragraph (f) is nearly identical to DR 9-103(B).

465

466 | This rule is substantially the same as the original Rule 1.15 adopted January 1, 2000

467

except that the language has been substantially simplified for ease of understanding and

468

the portions regarding the Financial Institutions duties redacted as they are appropriately

469

incorporated into the "Trust Account Notification Agreement" signed by all Virginia

470

approved financial institutions.

471

472 | COMMITTEE COMMENTARY

473

474 | ~~The Committee chose to adopt the trust account procedures and requirements under the~~

475

~~*Virginia Code*, with the exception of adding new requirements for lawyers handling~~

476

~~funds as fiduciaries.~~

477

478 | The Committee chose to modify the rule for ease of understanding and enforcement with

479

no substantive changes to a lawyer's safekeeping property and recordkeeping

480

requirements.

481