

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
RULES OF PROFESSIONAL CONDUCT 1.10 AND 1.15**

PETITION OF THE VIRGINIA STATE BAR

Jay B. Myerson, President
Karen A. Gould, Executive Director
James M. McCauley, Ethics Counsel
Emily F. Hedrick, Assistant Ethics Counsel
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
Phone (804) 775-0500
Fax (804) 775-0501

TABLE OF CONTENTS

I. Overview of the Issues	1
II. Publication and Comments	2
III. Proposed Rule Changes	3
RULE 1.10 Imputed Disqualification: General Rule	3
RULE 1.15 Safekeeping Property	4
IV. Conclusion	5

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF
RULES OF PROFESSIONAL CONDUCT 1.10 AND 1.15**

PETITION

TO THE HONORABLE CHIEF JUSTICE AND THE JUSTICES OF THE
SUPREME COURT OF VIRGINIA:

NOW COMES the Virginia State Bar, by its president and executive director, pursuant to Part 6, § IV, Paragraph 10-4 of the Rules of this Court, and requests review and approval of proposed changes to Rules of Professional Conduct 1.10 and 1.15, as set forth below. The proposed changes were approved by unanimous vote of the Council of the Virginia State Bar on April 21, 2021 (Appendix, Page 1).

I. Overview of the Issues

The Virginia State Bar Standing Committee on Legal Ethics (“Committee”) has proposed amendments to Rules 1.10 and 1.15. The proposed revisions to comments to Rules 1.10 and 1.15 clarify that certain conduct is mandatory by replacing the word “should” with “must”.

Rule 1.10

Rule 1.10 Comment [1] defines what makes a group of lawyers a “firm.” The last sentence, discussing the *per se* conflict under Rule 1.7(b)(3), refers to “the Rule that the same lawyer *should* not represent opposing parties in litigation.” [Emphasis added.] The proposal replaces “should” with “must” as it is not permissible for the same firm to represent opposing parties in the same litigation.

Rule 1.15

Rule 1.15 Comment [1] repeatedly uses the word “should” to describe what is required. As above, the proposed amendments replace “should” with “must” to clarify that these are mandatory obligations.

The proposed rule changes are included below in Section III.

II. Publication and Comments

The Standing Committee on Legal Ethics approved the amendments to Rules 1.10 and 1.15 at its meeting on February 27, 2020 (Appendix, Page 4). The Virginia State Bar issued a publication release dated February 27, 2020, pursuant to Part 6, § IV, Paragraph 10-2(c) of the Rules of this Court (Appendix, Page 5). Notice of the proposed rule amendments was also published in the Bar’s March 2020 newsletter (Appendix, Page 7), on the Bar’s website on the “Actions on Rule Changes and Legal Ethics

Opinions” page (Appendix, Page 8) and on the Bar’s “News and Information” page on February 28, 2020 (Appendix, Page 12).

One comment was received, from Leo Rogers (on behalf of the Local Government Attorneys) (Appendix, Page 14).

III. Proposed Rule Changes

RULE 1.10 Imputed Disqualification: General Rule

COMMENT

Definition of "Firm"

[1] Whether two or more lawyers constitute a firm as defined in the Terminology section can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule

that the same lawyer ~~should~~ must not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to the other.

RULE 1.15 Safekeeping Property

COMMENT

[1] A lawyer ~~should~~ must hold property of others with the care required of a professional fiduciary. Securities ~~should~~ must be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. For purposes of this Rule, the term “fiduciary” includes personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact. All property that is the property of clients or third persons ~~should~~ must be kept separate from the lawyer's business and personal property and, if funds, in one or more trust accounts. Separate trust accounts may be warranted when administering estate funds or acting in similar fiduciary capacities.

IV. Conclusion

The Supreme Court is authorized to regulate the practice of law in the Commonwealth of Virginia and to prescribe a code of ethics governing the professional conduct of attorneys. Va. Code §§ 54.1-3909, 3910.

Pursuant to this statutory authority, the Court has promulgated rules and regulations relating to the organization and government of the Virginia State Bar. Va. S. Ct. R., Pt. 6, § IV. Paragraph 10 of these rules sets forth the process by which legal ethics advisory opinions and Rules of Professional Conduct are promulgated and implemented. The proposed rule changes were developed and approved in compliance with all requirements of Paragraph 10.

THEREFORE, the Bar requests that the Court approve the proposed changes to Rules 1.10 and 1.15 for the reasons stated above.

Respectfully submitted,
VIRGINIA STATE BAR

A handwritten signature in black ink, appearing to read "Jay B. Myerson". The signature is written in a cursive style with a long horizontal line extending from the end.

Jay B. Myerson, President

A handwritten signature in black ink, appearing to read "Karen A. Gould". The signature is fluid and cursive, with a large loop at the end of the last name.

Karen A. Gould, Executive Director

Dated this 1st day of October, 2021.