VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 21st *day of* June, 2011.

On July 8, 2010 and May 26, 2011 came the Virginia State Bar, by Irving M. Blank, its President, and Karen A. Gould, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, and a modified proposal, respectively, praying that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be amended.

Amend Part Six, Section II, Rule 1.15 to read as follows:

Rule 1.15. Safekeeping Property.

(a) Depositing Funds.

(1) 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, shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) 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.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained 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 the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be promptly withdrawn from the trust account.

(b) 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;

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

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

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating

compliance with this Rule:

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

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

The ledger should clearly identify:

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

(ii) any unexpended balance.

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

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

(d) 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 governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall 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 each client, person 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 (d)(3)(ii) above and the subsidiary ledger balance from (d)(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.

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should 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 be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

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

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

[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 the 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 or mediation. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraphs (b)(4) and (b)(5) do not impose an obligation upon the lawyer to protect funds on behalf of the client's general creditors who have no valid claim to an interest in the specific funds or property in the lawyer's possession. However, a lawyer may be in possession of property or funds claimed both by the lawyer's client and a third person; for example, a previous lawyer of the client claiming a lien on the client's recovery or a person claiming that the property deposited with the lawyer was taken or withheld unlawfully from that person. Additionally, 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. For example, if a lawyer has actual knowledge of a third party's lawful claim to an interest in the specific funds held on behalf of a client, then by virtue of a statutory lien (e.g., medical, workers' compensation, attorneys' lien, a valid assignment executed by the client, or a lien on the subject property created by a recorded deed of trust) the lawyer has a duty to secure the funds claimed by the third party. Under the above-described circumstances, paragraphs (b)(4) and (b)(5) require the lawyer either to deliver the funds or

property to the third party or, if a dispute to the third party's claim exists, to safeguard the contested property or funds until the dispute is resolved. If the client has a non-frivolous dispute with the third party's claim, then the lawyer cannot release those funds without the agreement of all parties involved or a court determination of who is entitled to receive them, such as an interpleader action. A lawyer does not violate paragraphs (b)(4) and (b)(5) if he has acted reasonably and in good faith to determine the validity of a third-party's claim or lien.

[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.

[6] Nothing in this Rule is intended to prohibit an attorney from using electronic checking for his trust account so long as all requirements in this Rule are fulfilled. It is the lawyer's responsibility to assure that complete and accurate records of the receipt and disbursement of entrusted property are maintained in accordance with this Rule. Many businesses are now converting paper checks to automated clearinghouse (ACH) debits. Authorized ACH debits that are electronic transfers of funds (in which no checks are involved) are allowed provided the lawyer maintains a record of the transaction as required by this Rule. The record, whether consisting of the instructions or authorization to debit the account, a record or receipt from the financial institution, or the lawyer's independent record of the transaction, must show the

amount, date, recipient of the transfer or disbursement, and the name of the client or other person to whom the funds belong.

PRIOR RULE COMPARISON

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

COMMITTEE COMMENTARY

The Committee chose to modify the rule for ease of understanding and enforcement with no substantive changes to a lawyer's safekeeping property and record-keeping requirements.

* * *

Amend Part Six, Section IV, Paragraph 20 to read as follows:

20. Maintenance of Trust Accounts; Notice of Election Requirements.

Every trust account maintained by an active member of the VSB under Rules of Professional Conduct 1.15 shall also be maintained at a "financial institution approved by the Virginia State Bar" and maintained in accordance with this paragraph and Rule 1.15. A "financial institution approved by the Virginia State Bar" includes regulated state or federal chartered banks, savings institutions, and credit unions that are properly licensed and authorized to do

business, have federal insurance on deposits, and have entered into and agreed to abide by a Virginia State Bar Approved Financial Institution Agreement. (See Appendix A which the Virginia State Bar reserves the right to amend or modify upon notice to all approved financial institutions.) The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

(A) Interest-bearing Trust Accounts. A lawyer may maintain funds of clients in one or more interest-bearing accounts in one or more financial institutions, whenever the lawyer has established and follows record-keeping, accounting, clerical, and administrative procedures to compute and credit or pay periodically, but at least quarterly, pro rata to each client the interest on such client's funds less fees, costs, or expenses charged by the lawyer for the record-keeping, accounting, clerical, and administrative procedures associated with computing and crediting or paying such amounts.

(B) IOLTA Accounts. A lawyer may deposit funds of a client in an identifiable interest-bearing trust (IOLTA) account for which the lawyer has not established procedures to compute and credit or pay pro rata net earnings to such client whenever:

(1) At the time of such deposit the lawyer reasonably expects that the fees, costs, or expenses which the lawyer would be entitled to charge under Paragraph 20(A) would equal or exceed the pro rata interest on such client's funds (the determination of whether the funds of a client or third person can earn income in excess of fees, costs or expenses the lawyer would be entitled to charge under paragraph 20(A)

shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment); and

(2) The financial institution has agreed to:

(a) Periodically, but at least quarterly, remit to the Legal Services Corporation of Virginia (LSCV) interest or dividends on the average monthly balance of each such account or as otherwise computed in accordance with such bank's standard accounting practice, provided that such rate of interest shall not be less than the rate paid by such bank to regular, non-attorney depositors;

(b) Transmit with each remittance to LSCV a statement identifying the name of the lawyer or law firm from whose account the remittance is sent, the rate of interest applied, the period for which the remittance is made, the total amount of interest earned, the service charges or other fees assessed against the account, if any, and the net amount of interest remitted;

(c) Transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to LSCV from such interest-bearing account, the rate of interest applied, the fees assessed, if any, and the average account balance for the period for which the report is made;

(d) Charge no fees against an IOLTA trust account that are greater than the fees charged to non-attorney

depositors, except that an IOLTA remittance fee may be charged to defray the depository institution's administrative costs attributable to calculating and remitting the interest to LSCV; other allowable fees are per check charges, per deposit charges, a fee in lieu of a minimum balance and sweep fees. Allowable, reasonable fees may be deducted from interest or dividends earned on an IOLTA account, provided that such charges or fees shall be calculated in accordance with the Financial Institutions' standard practice for non-IOLTA customers. Fees or charges in excess of the interest or dividends earned on the IOLTA account, for any month or quarter, shall not be taken from the interest or dividends of any other IOLTA account. Fees for wire transfers, insufficient funds, bad checks, stop payment, account reconciliation, negative collected balances, and check printing are not considered customary account maintenance charges and are not deductible from the interest or dividends earned on the IOLTA account. All other fees including those non-customary fees just listed are the responsibility of the lawyer or law firm, who in turn may absorb these specific costs or pass along those fees to the client(s) being served by the transaction in accordance with attorney/client agreements. Financial Institutions may elect to waive any or all fees on IOLTA accounts in recognition of their charitable nature;

(e) Collect no fees from the principal deposited in the IOLTA trust account;

(f) Pay all or part of the funds deposited in such interest-bearing trust account upon demand or order. An IOLTA account may be an interest-bearing check account, a money market account with or tied to check-writing, a sweep account which is a government money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by United States government securities, or an open-end money market fund solely invested in or fully collateralized by the United States government securities; and

(g) Agree and abide by all provisions in the Virginia State Bar Approved Financial Institution Agreement.

(3) Interest accruing on such accounts and paid by the financial institution to LSCV shall be used for funding 1) civil legal services to the poor in Virginia, 2) LSCV's administrative expenses, and 3) the creation and augmentation of a reserve fund for the same purposes.

(C) Non-interest-bearing Trust Accounts. A lawyer may deposit funds of a client in an identifiable non-interest-bearing trust account for which the account accrues no interest or dividends so long as the attorney or law firm receives no consideration or benefit from the Financial Institution for opening a non-interest bearing trust account or for converting from an IOLTA account to a non-interest bearing trust account. A lawyer who elects not to participate in the maintenance of an interest-bearing trust account as described in Paragraph 20(B) must submit such an election in accordance with the procedures set forth in

Paragraph 20(F) of this rule.

(D) Reporting to Client. A lawyer who elects to deposit funds of a client in an account pursuant to Paragraph 20(B) or (C) shall not be required to seek permission from such client in making the election. As to funds deposited in accordance with Paragraph 20(B), a lawyer shall not be required to compute or report to such client any payment to LSCV of interest or dividends by the banking institution on funds in any such account wherein the client's funds have been deposited by the lawyer.

(E) Law Firm Trust Accounts. A law firm of which any participating lawyer is a member may maintain the account(s) on behalf of any or all lawyers in the firm.

(F) Opt-Out of IOLTA Account. A lawyer who elects to open an IOLTA account shall obtain a "Request to Establish IOLTA Account" form from LSCV. A lawyer who elects not to maintain an IOLTA account shall make such election on a "Request to Opt-Out" form provided by LSCV.

* * *

APPENDIX A

Virginia State Bar Approved Financial Institution Agreement

This Virginia State Bar Financial Institution Agreement ("Agreement") is made this _____ day of _____ , by and between the Virginia State Bar and _____ , ("Financial Institution").

WITNESS:

The undersigned, an officer of the Financial Institution executing this Agreement, being duly authorized to bind said institution by this Agreement, hereby applies to be approved as a depository to receive escrow, trust, or client funds, as defined in Part 6, § IV, Para. 20, of the Rules of the Supreme Court of Virginia, or any successor provision(s), from attorneys for deposit in what are hereinafter referred to as "Trust Accounts." The Financial Institution agrees to comply with the following requirements, or any successor provisions:

1. **Notification to Attorneys or Law Firm.** To promptly notify the attorney or law firm of an overdraft in any Trust Account or the dishonor for insufficient funds of any instrument drawn on any Trust Account held by it.

2. **Notification to Bar Counsel.** To report the overdraft or dishonor to Bar Counsel of the Virginia State Bar, as set forth in Paragraph 5 of this Agreement.

3. **Audit of Trust Account.** To provide reasonable access to the Virginia State Bar of all records of the Trust Account if an audit of such account is ordered pursuant to court order, or upon receipt of a subpoena therefor. The financial institution may charge for the reasonable costs of producing these records.

4. **Interest Calculation.** The financial institution shall not engage in the practice of "negative netting" as to IOLTA trust accounts.

5. **Form of Report.** That all such reports shall be substantially in the following format:

> In either case of a dishonored instrument or an instrument presented against insufficient funds in a Trust Account, but honored by the financial institution, the report shall be identical to the notice customarily forwarded to the depositor and shall include the name and address of the depositor notified, including the name of the lawyer responsible for the account, as well as a copy of the dishonored instrument, if such copy is normally provided to the depositor. In addition, the report shall identify the financial institution reporting the overdraft, the account number, the date of the overdraft, the name of the person making the report, their address and telephone number and date. The report shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor or, in the case of instruments that are honored by the financial institution, within five (5) banking days after the date of presentation for payment against insufficient funds.

6. **Consent of Attorneys or Law Firms.** The Financial Institution may require, as a condition to opening an attorney Trust Account, the written consent of the attorney or law firm opening such account to the notification to Bar Counsel of the Virginia State Bar as set forth in Paragraph 2 of this Agreement.

7. **Change of Name or Corporate Form.** If a Financial Institution changes its name, merges or otherwise affiliates with, or is acquired by another entity, the successor Financial Institution shall promptly notify Bar Counsel of the change and whether the successor institution wishes to serve as a financial institution approved by the Virginia State Bar for attorney Trust Accounts and enter into an Agreement.

8. **Termination of Agreement.** This Agreement may terminate upon thirty (30) days notice from the Financial Institution in writing to Bar Counsel that the institution intends to terminate the Agreement on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain Trust Accounts with the Financial Institution or any branch thereof. Notice to the Bar Counsel shall be sent by certified mail to the Virginia State Bar, Attention: Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219-2800. This agreement may also be canceled without prior notice by Bar Counsel of the Virginia State Bar if the financial institution fails to abide by the terms of the agreement.

9. **Binding Effect.** This Agreement shall be binding upon the Financial Institution and any branch thereof receiving Trust Accounts.

10. **Definitions.** For purposes of this agreement the following definitions will apply:

a. "Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a drawee bank before its midnight deadline.

b. "Insufficient funds" refers to a state of affairs in which there is an insufficient collected balance in an account as reflected in the financial institution's accounting records, so that an otherwise properly payable item presented for payment cannot be paid without creating an overdraft in the account.

c. "Dishonored" shall refer to instruments that have been dishonored because of insufficient funds as defined above.

d. "Negative Netting" refers to the practice of a financial institution collecting some part or all of the fees assessed during a stated period of time against any IOLTA account that has failed to generate enough interest to pay assessed fees from the positive interest generated by other IOLTA accounts and deducting those fees from the total interest remitted to the Legal Services Corporation of Virginia for that time period.

IN WITNESS WHEREOF, the Financial Institution has executed this Agreement on the date and year written above.

ATTEST:

_____

Name of Financial Institution

_____

Address of Financial Institution

_____

By_____
Officer's Name
(Please print)

_____
Officer's Signature

_____
Corporate Office Held

* * *

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective immediately.

A Copy,

Teste:

Patricia L Harrington

Clerk