

RULE CHANGE 2024(18)

COLORADO RULES OF PROFESSIONAL CONDUCT

Rules 1.15A and 1.15B

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

[NO CHANGE]

COMMENT

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

[1] Trust accounts containing funds of clients or third persons held in connection with a representation must be interest-bearing or dividend-paying for the benefit of the clients or third persons or, if the funds are nominal in amount or expected to be held for a short period of time, for the benefit of the Colorado Lawyer Trust Account Foundation (“COLTAF”). However, funds held by a lawyer whose owner or heirs cannot be located or their identity determined, or whose owner refuses to accept them, may be held in a COLTAF account, or remitted to COLTAF, pursuant to Colo. RPC 1.15B(k) or (l) regardless of the amount or length of time for which they are held. A lawyer should exercise good faith judgment in determining initially whether funds are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest-bearing account for the benefit of the client or third person. The lawyer should also consider such other factors as (i) the costs of establishing and maintaining the account, service charges, accounting fees, and tax report procedures; (ii) the nature of the transaction(s) involved; and (iii) the likelihood of delay in the relevant proceedings. A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of such funds, including without limitation the action described in paragraph 1.15B(i). A lawyer should make reasonable efforts to communicate with the owner of funds held in a COLTAF account or remitted to COLTAF that they do not earn interest for the benefit of the owner.

[2] - [6] [NO CHANGE]

[7] What constitutes “reasonable efforts,” within the meaning of Colo. RPC 1.15B(k), will depend on whether the lawyer does not know the identity of the owner of certain funds held in a COLTAF account, or the lawyer knows the identity of the owner of the funds but not the owner's location or the location of a deceased owner's heirs or personal representative. When the lawyer does not know the identity of the owner of the funds or a deceased owner's heirs or personal representative, reasonable efforts include an audit of the COLTAF account to determine how and when the funds lost their association to a particular owner or owners, and whether they constitute attorneys' fees earned by the lawyer or expenses to be reimbursed to the lawyer or a third person. When the lawyer knows the identity but not the location of the owner of the funds or the location of the owner's heirs or personal representative, reasonable efforts include attempted contact using last known contact information, reviewing the file to identify and contact third parties who may know the location of the owner or the owner's heirs or personal representative, and conducting internet searches. After making reasonable but unsuccessful efforts to identify, ~~and locate,~~ or to communicate with the owner of the funds or the owner's heirs or personal representative, a lawyer's decision to continue to hold funds in a COLTAF ~~or other trust~~ account, as opposed to remitting the funds to COLTAF, does not relieve the lawyer of the obligation to maintain records

pursuant to Rule 1.15D(a)(1)(A) ~~or to determine whether it is appropriate to maintain the funds in a COLTAF account, as opposed to a non-COLTAF trust account, pursuant to Colo. RPC 1.15B(b).~~ Under RPC 1.15B(1) reasonable efforts must be made by the lawyer to communicate that the funds are being held in a non-interest-bearing account and may be remitted to COLTAF.

When COLTAF has made a refund to a lawyer following the lawyer's determination of the identity and the location of their owner or the identity and location of the owner's heirs or personal representative, the lawyer's obligations with respect to those funds are set forth in Colo. RPC 1.15A or are subject to applicable probate procedures or orders. The disposition of unclaimed funds held in the COLTAF account of a deceased lawyer is to be determined in accordance with written procedures published by COLTAF.

[8] [NO CHANGE]

Rule 1.15B. Account Requirements

(a) - (j) [NO CHANGE]

(k) If a lawyer discovers that the lawyer does not know the identity or the location of the owner of funds held in the lawyer's COLTAF account, or the lawyer discovers that the owner of the funds is deceased, the lawyer must make reasonable efforts to identify and locate the owner or the owner's heirs or personal representative. If, after making such efforts, the lawyer cannot determine the identity or the location of the owner, or the owner's heirs or personal representative, the lawyer must either (1) continue to hold the unclaimed funds in a COLTAF ~~account or other trust account~~ or (2) remit the unclaimed funds to COLTAF in accordance with written procedures published by COLTAF and available through its website or upon request. A lawyer remitting unclaimed funds to COLTAF must keep a record of the remittance pursuant to Rule 1.15D(a)(1)(C). If, after remitting unclaimed funds to COLTAF, the lawyer determines both the identity and the location of the owner or the owner's heirs or personal representative, the lawyer shall request a refund for the benefit of the owner or the owner's estate, in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide upon request.

(l) If a lawyer holds funds in a COLTAF account but the owner of the funds refuses to accept the funds, or will not communicate with the lawyer about them after the lawyer has made reasonable efforts to contact the owner, then the lawyer must either (1) continue to hold the funds in a COLTAF account or (2) remit the funds to COLTAF in accordance with written procedures published by COLTAF and available through its website or upon request. If the lawyer chooses to remit the funds to COLTAF, the lawyer must first provide written notice to the owner informing them of the intent to remit. The lawyer must keep a record of the remittance pursuant to Rule 1.15D(a)(1)(C). If, after remitting the funds, the owner of the funds informs the lawyer that they will accept the funds, then the lawyer shall request a refund for the owner, in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide upon request.

Note: [NO CHANGE]

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

[NO CHANGE]

COMMENT

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

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[7] What constitutes “reasonable efforts,” within the meaning of [Colo. RPC 1.15B\(k\)](#), will depend on whether the lawyer does not know the identity of the owner of certain funds held in a COLTAF account, or the lawyer knows the identity of the owner of the funds but not the owner's location or the location of a deceased owner's heirs or personal representative. When the lawyer does not know the identity of the owner of the funds or a deceased owner's heirs or personal representative, reasonable efforts include an audit of the COLTAF account to determine how and when the funds lost their association to a particular owner or owners, and whether they constitute attorneys' fees earned by the lawyer or expenses to be reimbursed to the lawyer or a third person. When the lawyer knows the identity but not the location of the owner of the funds or the location of the owner's heirs or personal representative, reasonable efforts include attempted contact using last known contact information, reviewing the file to identify and contact third parties who may know the location of the owner or the owner's heirs or personal representative, and conducting internet searches. After making reasonable but unsuccessful efforts to identify, locate, or to communicate with the owner of the funds or the owner's heirs or personal representative, a lawyer's decision to continue to hold funds in a COLTAF account, as opposed to remitting the funds to COLTAF, does not relieve the lawyer of the obligation to maintain records pursuant

to Rule 1.15D(a)(1)(A). Under RPC 1.15B(l) reasonable efforts must be made by the lawyer to communicate that the funds are being held in a non-interest-bearing account and may be remitted to COLTAF. When COLTAF has made a refund to a lawyer following the lawyer's determination of the identity and the location of their owner or the identity and location of the owner's heirs or personal representative, the lawyer's obligations with respect to those funds are set forth in Colo. RPC 1.15A or are subject to applicable probate procedures or orders. The disposition of unclaimed funds held in the COLTAF account of a deceased lawyer is to be determined in accordance with written procedures published by COLTAF.

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Rule 1.15B. Account Requirements

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Note: [NO CHANGE]

Amended and Adopted by the Court, En Banc, October 2, 2024, effective immediately.

By the Court:

**William W. Hood, III
Justice, Colorado Supreme Court**