

1.15A(e)+(h), 1.15B(a)

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February 3, 2005

Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929

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STATE OF WASHINGTON  
CLERK OF THE SUPREME COURT  
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RE: Proposed Amendments to Rules of Professional Conduct

Dear Clerk:

Please consider my comments on the following proposed rules.

Rule 1.15A(e)

A lawyer must promptly provide a written accounting to a client or third person after distribution of property or upon request. A lawyer must provide, at least annually, a written accounting to a client or a third person for whom the lawyer is holding property.

That is elaborated upon in comment [5]. Property covered by this rule includes original documents effecting legal rights such as wills or deeds.

I am aware that at some point the Bar adopted a rule suggesting that attorneys return original wills to clients. Although it has always been my practice to suggest to clients that they keep their own wills, over the 30 years I have been practicing I have acquired some original wills because the clients wanted to leave them with me. I have also lost touch with those clients and been unable to return the original wills to them in light of the Bar Association suggestions that the wills be returned. Similarly, I have some original (recorded) deeds in my 30 years worth of closed files for various reasons, including that the property was conveyed to another party and so the original deeds became of historic interest only. If this rule is adopted, it should be made effective prospectively only. Where the client does not maintain a current address with the attorney, this puts an insurmountable burden on the attorney to every year send out a notice which one knows will be returned because the client has moved, leaving no forwarding address. Although there is now a statute that permits a lawyer to file such unclaimed wills with the county

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clerk, there is no such mechanism for deeds and in fact, since they are normally recorded, it does not seem any purpose is served in requiring ongoing notice. I recognize a different set of concerns would apply if the attorney is acting as a formal escrow agent and is holding a deed. Even then, however, I question the utility of having the attorney send notices every year reminding purchasers and sellers on a 20 or 30 year contract that the original documents are being held.

### Rule 1.15A(h)(9)

Only a lawyer admitted to practice law may be a signator on the [trust] account.

Although I currently have an associate, for many years I was a sole practitioner. I eventually found it necessary to put one of my non-lawyer staff on the trust account. My practice is primarily with worker's compensation clients, and I receive my client's time loss checks at least four days of every week and make them available to the client the same day. There needs to be a mechanism to have the checks signed if I am ill, on vacation, in court or otherwise unavailable to sign the checks which arrive each morning and which are picked up by the clients each afternoon. The solution is not necessarily to grant check signing authority to an associate, nor should the solution be to compel a sole practitioner to hire another attorney solely to process checks. The integrity of the trust account can only be maintained by the attorney in charge maintaining oversight. It is no guarantee of trust account integrity that only attorneys can sign on the accounts, as evidenced by the frequent disciplinary notices in the Bar News. This rule will put an insurmountable burden on small practitioners without any corresponding safeguard to the client.

### Rule 1.15B(a) (required trust account records)

A lawyer must maintain current trust account records. They may be in electronic or manual form and must be maintained for at least seven years after the event they record.....

This bright line for retention of trust records is an excellent idea. The current rule, which

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requires one to keep trust checks and documentation for five years until the transaction is completed makes it very difficult to determine when trust accounting records can be destroyed. This is particularly true in long, ongoing cases such as workman's compensation cases.

Yours very truly,



Laurel Smith  
Attorney at Law

LS:njh