Recent Developments in Legal Ethics

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Boone County Bar Association

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TOPICS

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4-1.15 SAFEKEEPING PROPERTY

(a) As used in this Rule 4-1.15(a) to [~~(i)~~](l), the following terms mean:

(1) "Approved institution,"

(A) an eligible institution, or

(B) a financial institution, in which a trust account of a lawyer with an exemption under Rule 4-1.15(l)(5) is held,

that has been approved by the advisory committee pursuant to regulations adopted by the advisory committee and approved by this Court.

[~~(1)~~](2) "Client trust account," an account denominated as such or by words of similar import in which a lawyer or law firm holds funds on behalf of a client or third person and on which withdrawals or transfers can be made on demand, subject only to any notice period that the financial institution is required to observe by law or regulation. Every client trust account shall be either an IOLTA account or a non-IOLTA trust account.

[~~(2)~~](3) "Daily overnight financial institution repurchase agreement," an agreement established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

[~~(3)~~](4) "Eligible institution," a bank or savings and loan association authorized by federal or state law to do business in Missouri, the deposits of which are insured by an agency of the federal government, or an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Missouri that has voluntarily chosen to offer and maintain IOLTA

accounts to its lawyer and law firm customers. To be an "eligible institution," the foundation also must determine that the institution:

(A) pays no less on IOLTA accounts than the lesser of:

(i) the highest interest rate or dividend generally available from the institution to its non-IOLTA customers for each IOLTA account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and these factors do not include that the account is an IOLTA account. The institution also shall consider all product option types for an IOLTA account offered by the financial institution to its non-IOLTA customers by either using the available account option as an IOLTA account or paying the comparable interest rate or dividend on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product; or

(ii) an amount on funds that would otherwise qualify for the investment options noted at Rule 4.1.15(a) [~~(6)~~](7)(B) to (D) equal to 60% of the federal funds target rate as of the first business day of the quarter or other IOLTA remitting period or 0.60%, which amount is deemed to be already net of allowable reasonable fees;

(B) only deducts allowable reasonable fees from the interest or dividends on an IOLTA account;

(C) remits at least quarterly the interest or dividends earned on each IOLTA account, net of allowable reasonable fees, if any, to the foundation, which shall be the sole beneficial owner of the interest or dividends earned on the IOLTA account;

(D) transmits with each remittance a report, on a form and through any manner of transmission approved by the foundation, that identifies each lawyer or law firm for whose IOLTA account the remittance is sent, the amount of the remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends remitted, the amount and type of charges or fees deducted, if any, and the average account balance for the period in which the report is made; and

(E) transmits to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.

[~~(4)~~](5) "Financial institution," a bank or savings and loan association authorized by federal or state law to do business in Missouri, the deposits of which are insured by an agency of the federal government.

[~~(5)~~](6) "Foundation," the Missouri lawyer trust account foundation described in this Court's order of October 23, 1984.

[~~(6)~~](7) "IOLTA account," a pooled client trust account held at an eligible institution that is comprised of client and third person funds that cannot otherwise earn income for the client or third person in excess of the costs incurred to secure such income, and [~~which~~] that is:

(A) an interest-bearing checking account;

(B) a money market account with or tied to check-writing;

(C) a sweep account [~~which~~] that 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

(D) an open-end money market fund solely invested in or fully collateralized by United States government securities.

[~~(7)~~](8) "Non-IOLTA customers" includes all of the customers of the financial institution other than those who maintain IOLTA accounts.

[~~(8)~~](9) "Non-IOLTA trust account," an interest-bearing client trust account established at a financial institution as:

(A) a separate client trust account for the deposit of the funds of a particular client or third person, the net earnings of which will be paid to the client or third person who owns the deposited funds; or

(B) a pooled trust account with subaccounting by the financial institution or by the lawyer or law firm that will provide for computation of the net interest or dividend earned by the funds of each client or third person and also will provide for the payment thereof to the client or third person.

[~~(9)~~](10) "Open-end money market fund," a fund holding itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940 and, at the time of the investment, having total assets of at least $250,000.000.

[~~(10)~~](11) "United States government securities," United States treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(b) For purposes of Rule 4-1.15(a) to [~~(i)~~](l), “allowable reasonable fees” are per check charges, per deposit charges, a fee in lieu of minimum balance, sweep fees and a reasonable IOLTA account administrative fee. 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 an eligible institution's 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 interest or dividends of any other IOLTA account. No fees or charges may be assessed against or deducted from the principal of any IOLTA account. All other fees are the responsibility of the lawyer or law firm and may be charged to the lawyer or law firm. Eligible institutions may elect to waive any or all fees on IOLTA accounts.

(c) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Client or third party funds shall be kept in a separate account designated as a “Client Trust Account” or words of similar import maintained in the state where the lawyer's office is situated or elsewhere if the client or third person consents. Every client trust account shall be either an IOLTA account or a non-IOLTA trust account. No earnings from an IOLTA account or a non-IOLTA trust account shall be made available to any

lawyer or law firm, nor shall any lawyer or law firm have a right or claim to such earnings. Other property shall be identified as such and appropriately safeguarded.

(d) Complete records of [~~such account funds and other property~~] client trust accounts shall be [~~kept by the lawyer and shall be~~] maintained and preserved for a period of at least five years:

(1) after termination of the representation, or

(2) [~~from~~] after the date of the last disbursement of funds,

whichever is later.

Complete records include, but are not limited to, checkbooks, cancelled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client or other parties.

[~~(d)~~](e) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

[~~(e)~~](f) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(g) A client trust account, whether IOLTA or non-IOLTA, must be in an approved institution. Every lawyer practicing or admitted to practice in this jurisdiction, as a

condition thereof, shall be conclusively deemed to have consented to the overdraft reporting and production requirements mandated by the regulations adopted by the advisory committee. The advisory committee shall promulgate regulations necessary to provide for overdraft reporting on lawyer trust accounts.

(h) The advisory committee may refuse to approve a financial institution and may revoke approval as provided in the regulations approved by this Court.

(1) any financial institution that is refused approval by the advisory committee may petition this Court, within 30 days of receiving notice of the action, for review of the advisory committee's decision. This Court may direct that the issues raised in the petition be briefed and argued as though a petition for an original remedial writ has been sustained. This Court may sustain, modify, or vacate the action of the advisory committee or dismiss the petition.

(2) any lawyer or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked or that the financial institution is canceling its agreement shall remove all trust accounts from the financial institution within 30 days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account. Within the same time, written notice of compliance with this Rule 4-1.15(h)(2) shall be sent to the chief disciplinary counsel. The notice shall include the name and address of the new trust account depository institution.

[~~(f)~~](i) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as provided

in this Rule 4-1.15 or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

[~~(g)~~](j) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer shall keep the property separate until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

[~~(h)~~](k) Unless exempt as provided in Rule 4-1.15[~~(i)~~](l), a lawyer or law firm shall establish and maintain one or more IOLTA accounts into which shall be deposited all funds of clients or third persons, but only in compliance with the following provisions:

(1) no earnings from such account shall be made available to the lawyer or law firm, and the lawyer or law firm shall have no right or claim to such earnings;

(2) a lawyer or law firm shall deposit in an IOLTA account all funds of clients and third persons from which no income could be earned for the client or third person in excess of the costs incurred to secure such income, and all other client or third person funds shall be deposited into a non-IOLTA trust account;

(3) in determining whether client or third person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer shall take into consideration the following factors:

(A) the amount of interest that the funds would earn during the period they are expected to be deposited;

(B) the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person;

(C) the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons;

(D) any other circumstance that affects the ability of the client or third person funds to earn income, in excess of the costs incurred to secure such income, for the client or third person;

(4) the determination of whether the funds of a client or third person can earn income in excess of costs as provided in Rule 4-1.15[~~(h)~~](k)(3) 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;

(5) the lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances require further action with respect to the funds of any client or third person; and

(6) a lawyer or law firm required to establish and maintain an IOLTA account under this Rule 4-1.15 shall maintain IOLTA accounts only at an approved institution that voluntarily chooses to offer such accounts. The foundation shall annually publish a list of approved institutions, shall update the list seasonably, and shall provide a copy of the updated list to any Missouri lawyer upon written request. The foundation

shall promptly notify the advisory committee and the chief disciplinary counsel when it removes a financial institution from the list.

[~~(i)~~](l) Every lawyer shall certify in connection with this Court's annual enrollment statement the financial institutions in which the lawyer has one or more trust accounts and that the lawyer or the law firm with which the lawyer is associated either maintains an IOLTA account with an eligible institution as provided in Rule 4-1.15[~~(h)~~](k) or is exempt because the:

(1) lawyer is not engaged in the practice of law;

(2) nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds;

(3) lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;

(4) lawyer is associated in a law firm with at least one lawyer who is admitted to practice and maintains an office in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled trust account for the deposit of funds of clients or third persons in a financial institution located in such other jurisdiction outside the state of Missouri and any interest or dividends, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located; or

(5) foundation, for the current reporting period, has exempted the lawyer or law firm from the requirement of maintaining an IOLTA account and depositing client and third person funds therein because a lawyer or law firm:

(A) maintains an IOLTA account that has not and cannot reasonably be expected to produce interest or dividends in excess of allowable reasonable fees; or

(B) establishes that no eligible institution within reasonable proximity to his, her or its office offers IOLTA accounts.

The foundation may establish criteria and procedures by which an exemption under this Rule 4-1.15[~~(i)~~](l)(5) may be obtained.

The trust accounts of lawyers or law firms exempt under this Rule 4-1.15[~~(i)~~](l)(5) shall be non-interest-bearing, except that such accounts shall be interest-bearing if funds held for particular clients or matters warrant one or more non-IOLTA accounts under Rule 4-1.15[~~(h)~~](k)(3).

[~~(j)~~](m) A lawyer shall securely store a client's file for 10 years after completion or termination of the representation absent other arrangements between the lawyer and client. If the client does not request the file within 10 years after completion or termination of the representation, the file shall be deemed abandoned by the client and may be destroyed.

A lawyer shall not destroy a file pursuant to this Rule 4-1.15[~~(j)~~](m) if the lawyer knows or reasonably should know that:

(1) a legal malpractice claim is pending related to the representation;

(2) a criminal or other governmental investigation is pending related to the representation;

(3) a complaint is pending under Rule 5 related to the representation; or

(4) other litigation is pending related to the representation.

Items in the file with intrinsic value shall never be destroyed.

A lawyer destroying a file pursuant to this Rule 4-1.15[~~(j)~~](m) shall securely store items of intrinsic value or deliver such items to the state unclaimed property agency. The file shall be destroyed in a manner that preserves client confidentiality.

A lawyer's obligation to maintain trust account records as required by Rule 4-1.15(a) to [~~(i)~~](l) is not affected by this Rule 4-1.15[~~(j)~~](m).

COMMENT

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[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, Rule 4-1.15[~~(d)~~](e) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds is the lawyer's.

* * *

[4] Rule 4-1.15[~~(j)~~](m) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by

the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

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SUPPLEMENTAL MISSOURI COMMENT

In 2007, Rule 4-1.15 was amended to require lawyers to maintain IOLTA accounts if not exempted by Rule 4-1.15[~~(i)~~](l). It is expected that a lawyer or law firm will exercise good faith judgment in determining whether funds of a client or third party are of such a nominal amount or are expected to be held by the lawyer for such a short period of time that the funds cannot earn interest or dividend income for the client or third party in excess of the costs incurred to secure such income. All relevant factors should be considered in this determination, including, for example, the cost of establishing and maintaining accounts for the benefit of clients or third persons, service charges, accounting fees and tax reporting procedures, the nature of the transactions involved and the likelihood of delay. It is also expected that placement of the funds will be reviewed at reasonable intervals if the funds remain on hand to determine if changed circumstances require further action with respect to such funds. The amended Rule 4-1.15 conforms with the decision in *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2003).

Amended Rule 4-1.15 also requires that IOLTA funds be deposited with institutions paying interest and dividends comparable to rates paid to the institution's own other similarly-situated non-IOLTA customer. This recognizes that additional options have developed and are being offered in the marketplace by financial institutions from which qualifying IOLTA balances should also benefit. Apart from the important goal of fairness in the treatment of IOLTA funds, the comparability and other modifications in amended Rule 4-1.15 are important to the purposes of the IOLTA program: providing a source of funds to support civil legal services to the poor, improve the administration of justice, and promote other programs for the benefit of the public as are specifically approved from time to time by this Court.

RULE 4-1.15 SAFEKEEPING PROPERTY

OVERDRAFT REPORTING

Advisory Committee Regulation

(a) The advisory committee shall only approve a financial institution that files with the advisory committee an agreement in a form provided by the advisory committee.

(b) The financial institution shall agree:

(1) To report to the chief disciplinary counsel whenever any properly payable instrument or other debit is presented against a lawyer's client trust account containing insufficient funds, irrespective of whether or not the instrument or debit is honored;

(2) To cooperate with the chief disciplinary counsel's investigation related to a report;

(3) To maintain a copy of all records related to a report for a period of five years. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days notice in writing to the advisory committee. If a bank or branch changes ownership, the new owner must seek approval from the advisory committee or provide notice of cancellation within 30 days, unless the new owner is a financial institution that is already approved;

(4) To make all reports within five days after the financial institution knows of the overdraft, in the following format:

(A) In the case of a dishonored instrument or debit, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of any dishonored instrument, if such a copy is normally provided to depositors;

(B) In the case of instruments or debits that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(c) The advisory committee shall annually publish a list of approved financial institutions, shall update the list seasonably, and shall provide a copy of the updated list to any Missouri lawyer upon written request. The advisory committee shall promptly publish notification of revocation of the approval of a financial institution and shall promptly notify the foundation.

(d) The report of an overdraft to the chief disciplinary counsel does not automatically result in disciplinary action. The lawyer shall be given an opportunity to explain the report, including providing evidence that the report resulted from an error by the financial institution.

(e) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. No charges or fees related to an overdraft shall be removed from funds to be remitted to the foundation.

(f) Approval of a financial institution shall be revoked and the financial institution removed from the list of approved financial institutions if it is found to have engaged in a pattern of neglect or to have acted in bad faith in noncompliance with its obligations under the written agreement.

(1) The chief disciplinary counsel shall communicate any decision to seek revocation of approval to the financial institution in writing by certified mail at the address given on the agreement. The revocation notice shall state the specific reasons for which revocation is sought and advise of any right to reconsideration. The financial institution shall have 15 days from the date of receipt of the written notice to file a written request with the chief disciplinary counsel seeking reconsideration of the chief disciplinary counsel's decision. Failure of the financial institution to timely seek reconsideration, in writing, after receipt of notification is acceptance of revocation.

(2) If, after reconsideration, the chief disciplinary counsel notifies the financial institution of the intent to seek revocation, the financial institution shall accept or reject the revocation, in writing, within 15 days of the receipt of the notice. Failure of the financial institution to timely reject revocation, in writing, is acceptance of revocation. If revocation is rejected, the chief disciplinary counsel shall prepare an information. The procedures shall be the same as those set forth in Rule 5 for a disciplinary hearing on a lawyer. The approved status of the financial institution shall continue until such time as this process is final.

(3) Once revocation of the approval of the financial institution is final, the institution shall not thereafter be approved as a depository for attorney trust accounts

until such time as the financial institution petitions the advisory committee for new approval, including in the petition a plan for curing any deficiencies that resulted in the prior revocation and for periodically reporting compliance with the plan in the future.

(g) Within 15 days of the date revocation becomes effective or of notification that the financial institution is canceling the agreement, a financial institution shall give written notification of the revocation action to all holders of lawyer trust accounts on deposit with the financial institution, and file a report with the chief disciplinary counsel of such notification contacts within 30 days.

(h) Any lawyer or law firm receiving notification from a financial institution that the institution's approval as a trust account depository has been revoked or that the financial institution is canceling its agreement shall remove all trust accounts from the financial institution within 30 days of receipt of such notice or by such later date as is required for the payment of all outstanding items payable from the trust account, and shall send written notice of compliance to the chief disciplinary counsel, including the name and address of the new trust account depository institution.

Limited Scope Representation a/k/a Unbundled Legal Services

By Sara Rittman

The Supreme Court adopted[1] rule changes, effective July 1, 2008, clarifying the duties and procedures that apply when an attorney provides limited scope legal services to a client. Although the adoption of these changes was somewhat controversial, it was common, and ethically permissible, for attorneys to provide limited scope legal services prior to the adoption of these changes. However, previously, the method by which this was accomplished by attorneys and the manner in which it was treated by various courts and judges differed greatly.

The new version of Rule 4-1.2(c) makes it clear that the client must give "informed consent in a writing signed by the client." A sample form is included in the comment. Attorneys who engage in limited scope representation should pay close attention to the written agreement to make sure it spells out what the attorney will do *and* what the attorney will not do. In general, a good fee agreement or engagement letter, for any type of representation, will spell out what is excluded as well as what is included. Complete coverage of excluded as well as included services is paramount in a limited scope representation fee agreement.

The requirement of a signed writing does not apply to: (1) an initial consultation, (2) pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school, or (3) services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation. However, better practice dictates that the attorney will document the contact and the services provided, even if a signed writing is not mandated.

The exception for initial consultations will likely be the most commonly used exception to the signed writing requirement. Paragraph [2] of the comment recognizes that an attorney may provide legal advice during an initial consultation. "The initial consultation ends when the lawyer and the client agree that the lawyer will or will not undertake the representation."

The requirement of a signed writing only applies to limitations on the scope of the representation in a particular matter. For example, it would apply if the attorney agreed only to review pleadings and other documents to be filed by the client, *pro se*. It would apply if the attorney agreed to draft a trust but not to be involved in transferring title of property to fund the trust. It would also apply if the attorney agreed to represent the client at trial, but not on appeal.

The signed writing requirement would not apply to a situation in which an attorney agrees to fully represent a defendant in a damages case but does not agree to handle a related subrogation action. It would not apply if the attorney agreed to fully defend a client against a criminal charge but does not agree to handle civil litigation arising from the same facts. Malpractice and other concerns make it advisable to exclude the other actions in writing, but Rule 4-1.2 would not require a signed, written agreement. In these situations, the attorney is not limiting the scope of the representation in the matter for which the attorney was hired.

Several other rules were amended to establish uniformity in relationships among attorneys who provide limited scope representation, the courts, and opposing counsel. One of these rules is Rule 55.03. If an attorney provides assistance with preparation of pleadings, that fact may be shown on the pleading without constituting an entry of appearance by the attorney. Rule 55.03(b)(2).

These rules specifically provide that an attorney may enter a limited appearance. The attorney must specify the purpose(s) for which he or she is entering a limited appearance. As a general rule, during the period the limited appearance is in effect, the opposing party will continue to serve papers on the otherwise self-represented party. However, the limited appearance attorney may serve opposing counsel "with a copy of the notice of limited appearance setting forth a time period within which service of papers shall be upon the attorney for the otherwise self-represented party." Rule 44.03(b). Similarly, under Rule 4-1.2(e), the otherwise self-represented party will be treated as unrepresented under Rules 4-4.2 and 4-4.3, unless the limited appearance attorney "provides other counsel with a written notice of a time period within which other counsel shall communicate only with the lawyer of the party who is otherwise self-represented."

Withdrawal is automatic, once the limited appearance attorney "has fulfilled the duties as set forth in the notice and files a termination of limited appearance with the court." Rule 55.03(b)(3). *See also,* Rule 4-1.16(c).

In terms of liability for sanctions, an "attorney providing drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney knows that such representations are false…." Rule 55.03(c)(3).

At the same time these rules were adopted, the Supreme Court adopted Rule 88.09, which applies to the related subject of parties not represented by counsel in dissolution related proceedings. That topic is beyond the scope of this article.

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[1] The rules were originally adopted by Order dated December 21, 2007. A new Order was issued with revisions to Rule 4-1.2 on June 23, 2008. The most recent revisions are not in the bound version or the May 15, 2008, supplement to the *Missouri Court Rules* handbook. The complete rule is available online through the www.courts.mo.gov website.

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Advisory Committee of the Supreme Court of Missouri

Formal Opinion 127

SCANNING CLIENT FILES

This opinion addresses the issue of destruction of the client's paper file, without client consent, if the firm has a complete electronic version of the file.

Formal Opinion 115, as amended, states that the file belongs to the client, cover to cover. *In the Matter of Cupples*, 952 S.W.2d 226, 234 (Mo. banc 1997), reinforces the client's ownership of the file. Rule 4-1.15(j) requires attorneys to maintain the file for a period of ten years, or for such other period as agreed upon with the client. However, no rule or previous opinion addresses the issue of whether the file may be maintained in electronic form.

Several issues must be considered in relation to maintaining the file in electronic form, if the paper file will be destroyed. Will the electronic storage media have integrity for the period the file must be stored? During the period in which the file must be stored, will it be accessible using the hardware and software currently available? Is it permissible to destroy the entire paper file? How will the file be provided to the client? If an attorney properly addresses these issues, it is permissible for a client file to be stored solely in electronic format, without obtaining client consent.

It is not possible to specify the type of electronic media that may be used for file storage. The storage media must be established as having archive quality integrity for the entire period that the file must be stored. Alternatively, the firm must transfer the data to new media, periodically, during the storage period, to ensure the integrity of the data. The firm must also ensure that software and hardware necessary to access the data will be available during the storage period. These issues involve knowledge of technology standards and developments. To the extent necessary, an attorney must consult those with appropriate expertise regarding these aspects of technology.

An attorney may destroy most, but not necessarily all, of the paper file, if the file is stored electronically. Items of intrinsic value may not be destroyed. Originals that may have legal significance, as originals, during the representation may not be destroyed. We encourage firms to offer the paper file to the client prior to destruction.

For purposes of accessing the file, the attorney must have the necessary software and hardware available. However, if the client requests the file, the attorney must provide it to the client in a manner in which the client will be able to access it using commonly used, relatively inexpensive, software and hardware, any time during the ten years the attorney is required to maintain the file or for such other time as the attorney and client

have agreed. Alternatively, the attorney may provide the file to the client in paper format, unless that is contrary to an agreement between the attorney and client. During or after the ten year or agreed upon period, the attorney must provide the file to the client without charge, except for shipping or delivery charges.

May 19, 2009

4-7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

A communication is false if it contains a material misrepresentation of fact or law.

A communication is misleading if it:

(a) omits a fact as a result of which the statement considered as a whole is materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve;

(c) proclaims results obtained on behalf of clients, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts or settlements, without stating that past results afford no guarantee of future results and that every case is different and must be judged on its own merits;

(d) states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(e) compares the quality of a lawyer's or a law firm’s services with other lawyers' services, unless the comparison can be factually substantiated;

(f) advertises for a specific type of case concerning which the lawyer has neither experience nor competence;

(g) indicates an area of practice in which the lawyer routinely refers matters to other lawyers, without conspicuous identification of such fact;

(h) contains any paid testimonial about or endorsement of the lawyer, without conspicuous identification of the fact that payment has been made for the testimonial or endorsement;

(i) contains any simulated portrayal of a lawyer, client, victim, scene, or event without conspicuous identification of the fact that it is a simulation;

(j) provides an office address for an office staffed only part-time or by appointment only, without conspicuous identification of such fact; or

(k) states that legal services are available on a contingent or no-recovery-no-fee basis without stating conspicuously that the client may be responsible for costs or expenses, if that is the case.

The presumptions that statements are misleading contained in Rule 4-7.1(c), (g), (h), and (k) shall not apply to a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

* * *

SUPPLEMENTAL MISSOURI COMMENT

This Rule 4-7.1 is not intended to alter the definition of "competence" as defined in Rule 4-1.1.

Rule 4-7.1 prohibits false or misleading communications. False and misleading statements have never enjoyed the limited first amendment protection afforded to other forms of commercial speech by *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), and its progeny.

Rule 4-7.1(c) allows a verifiable statement regarding the number of cases tried or handled in a particular area without the disclaimer language of Rule 4-7.1(c).

Rule 4-7.1(h) addresses the practice of using testimonials and endorsements by entertainers, sports figures, or other well-known persons. Rule 4-7.1 requires the disclosure of the fact that a payment was made to obtain the testimony or endorsement, thereby giving the public an opportunity to evaluate the credibility of the statement.

Rule 4-7.1(i) deals with simulations primarily utilized in the electronic media. Rule 4-7.1 permits simulations of a lawyer, client, victim, scene, or event if the advertising indicates that it is a simulation that is being portrayed. The simulation must contain a disclosure that it is a simulation in order to counteract any suggestion that the representation is a portrayal of actual fact. Rule 4-7.1 also permits a communication to contain a picture or other representation of the lawyer or lawyers providing the legal services that are the subject of the advertisement.

"Price" advertising can provide a valuable service to consumers of legal services and is not discouraged by this Rules 4. However, characterization of rates or fees chargeable by the lawyer or law firm such as "cut-rate," "lowest," "giveaway," "below cost," "discount," or "special" is misleading unless the comparison can be factually substantiated.

A communication is false or misleading if it states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

A communication that portrays a former judge in a robe or in the courtroom accompanied by a reference to the lawyer as “judge” may be misleading as it may create an unjustified expectation about results the lawyer can achieve.

4-7.2 ADVERTISING

(a) Subject to the requirements of Rule 4-7.1, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio, or television, or through direct mail advertising distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. The record shall include the name of at least one lawyer responsible for its content unless the advertisement or written communication itself contains the name of at least one lawyer responsible for its content.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that:

(1) a lawyer may pay the reasonable cost of advertising or written communication permitted by this Rule 4-7.2;

(2) a lawyer may pay the reasonable cost of advertising, written communication, or other notification required in connection with the sale of a law practice as permitted by Rule 4-1.17; and

(3) a lawyer may pay the usual charges of a qualified lawyer referral service registered under Rule 4-9.1 or other not-for-profit legal services organization.

(d) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer. Similarly, in any communications such as television, radio, or other electronic programs purporting to give the public legal advice or legal information, for which programs the broadcaster receives any remuneration or other consideration, directly or indirectly, from the lawyer who appears on those programs, the lawyer shall conspicuously disclose to the public the fact that the broadcaster has been paid or receives consideration from the lawyer appearing on the program.

(e) A lawyer or law firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week, or

(2) the advertisement states:

(A) the days and times during which a lawyer will be present at that office, or

(B) that meetings with lawyers will be by appointment only.

(f) Any advertisement or communication made pursuant to this Rule 4-7.2, other than written solicitations governed by the disclosure rules of Rule 4-7.3(b), shall contain the following conspicuous disclosure:

"The choice of a lawyer is an important decision and should not be based solely upon advertisements."

"Conspicuous" means that the required disclosure must be of such size, color, contrast, location, duration, cadence, or audibility that an ordinary person can readily notice, read, hear, or understand it.

(g) The disclosures required by Rule 4-7.2(e) and (f) need not be made if the information communicated is limited to the following:

(1) the name of the law firm and the names of lawyers in the firm;

(2) one or more fields of law in which the lawyer or law firm practices;

(3) the date and place of admission to the bar of state and federal courts; and

(4) the address, including e-mail and web site address, telephone number, and office hours.

(h) Any words or statements required by Rules 4-7.1, 4-7.2, or 4-7.3 to appear in an advertisement or direct mail communication must appear in the same language in which the advertisement or direct mail solicitation appears. If more than one language is used in an advertisement or direct mail communication, any words or statements required by Rules 4-7.1 to 4-7.6 must appear in each language used in the advertisement or direct mail communication.

(i) The provisions of Rule 4-7.2 shall not apply to services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. section 2996(b) or to pro bono services provided free of charge

by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

The provisions of Rule 4-7.2 shall not apply to law firms or lawyers who promote, support or publicize through advertising that substantially and predominantly features any of the following: legal services corporation; community or other non-profit organization; recognized community events or celebrations; institutions; entities; or individuals other than themselves.

* * *

SUPPLEMENTAL MISSOURI COMMENT

Advertising concerning a lawyer's services should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of appropriate counsel. Information communicated in advertising should be disseminated in an objective and understandable fashion and should be relevant to a prospective client's ability to choose a lawyer. A lawyer should strive to communicate such information without undue emphasis upon advertising stratagems, which serve to hinder rather than to facilitate intelligent selection of counsel. Tasteful advertising is a matter of subjective interpretation. However, in all communications concerning a lawyer's services, a lawyer should avoid advertising that serves to denigrate the dignity of the profession or trust in courts, of which every lawyer functions as an officer.

Rule 4-7.2(d) and (e) have been added to jointly address the problem of advertising that experience has shown misleads the public concerning the location where services will be provided or the lawyer who will be performing these services. Together

they prohibit the same sort of “bait and switch” advertising tactics by lawyers that are universally condemned.

Rule 4-7.2(e) also prohibits advertising the availability of a satellite office that is not staffed by a lawyer at least on a part-time basis. Rule 4-7.2 does not require, however, that a lawyer or firm identify the particular office as its principal one. Experience has shown that, in the absence of such regulation, members of the public have been misled into employing a lawyer in a distant city who advertises that there is a nearby satellite office, only to learn later that the lawyer is rarely available to the client because the nearby office is seldom open or is staffed only by lay personnel.

Rule 4-7.2(e) is not intended to restrict the ability of legal services programs to advertise satellite offices in remote parts of the program’s service area even if those satellite offices are staffed irregularly by attorneys. Otherwise, low-income individuals in and near such communities might be denied access to the only legal services truly available to them.

When a lawyer or firm advertises, the public has a right to expect that lawyer or firm will perform the legal services. Experience has shown that lawyers not in the same firm may create a relationship wherein one will finance advertising for the other in return for referrals. Nondisclosure of such a referral relationship is misleading to the public. Accordingly, Rule 4-7.2(d) prohibits such a relationship between an advertising lawyer and a lawyer who finances the advertising unless the advertisement discloses the nature of the financial relationship between the two lawyers. Rule 4-7.2(d) also requires disclosure if a broadcaster receives remuneration from a lawyer appearing on any television, radio, or other electronic program purporting to give the public legal advice.

In the case of television, the disclosure required by Rule 4-7.2(f) may be made orally or in writing. In the case of radio, the disclosure must be made orally. The disclosure required by Rule 4-7.2(f) may, at the option of the advertiser, include the following language: "This disclosure is required by rule of the Supreme Court of Missouri." This disclosure is only required for advertisements in Missouri.

Disclosures that are large in size, are emphasized through a sharply contrasting color, and, in the case of television advertisements, remain visible or audible for a sufficiently long duration are likely to be more effective than those lacking such prominence. The disclosure should be prominent enough that the ordinary person will actually see and understand it in the context of the actual advertisement. Disclosures generally are more effective when they are made in the same mode (visual or oral) in which the claim necessitating the disclosure is presented.

Even if a disclosure is large in size and long in duration, other elements of an advertisement may distract the ordinary person so that they may fail to notice the disclosure. The advertisement should take care not to undercut the effectiveness of disclosures by placing them in competition with other arresting elements of the advertisement.

4-7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

This Rule 4-7.3 applies to in-person and written solicitations by a lawyer with persons known to need legal services of the kind provided by the lawyer in a particular matter for the purpose of obtaining professional employment.

(a) In-person solicitation. A lawyer may not initiate the in-person, telephone, or real time electronic solicitation of legal business under any circumstance, other than with an existing or former client, lawyer, close friend, or relative.

(b) Written Solicitation. A lawyer may initiate written solicitations to an existing or former client, lawyer, friend, or relative without complying with the requirements of this Rule 4-7.3(b). Written solicitations to others are subject to the following requirements:

(1) any written solicitation by mail shall be plainly marked "ADVERTISEMENT" on the face of the envelope and all written solicitations shall be plainly marked "ADVERTISEMENT" at the top of the first page in type at least as large as the largest written type used in the written solicitation;

(2) the lawyer shall retain a copy of each such written solicitation for two years. If written identical solicitations are sent to two or more prospective clients, the lawyer may comply with this requirement by retaining a single copy together with a list of the names and addresses of persons to whom the written solicitation was sent;

(3) each written solicitation must include the following:

"Disregard this solicitation if you have already engaged a lawyer in connection with the legal matter referred to in this solicitation. You may wish to consult your lawyer or another lawyer instead of me (us). The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this solicitation is general and that your own situation may vary. This statement is required by rule of the Supreme Court of Missouri.;"

(4) written solicitations mailed to prospective clients shall be sent only by regular United States mail, not registered mail or other forms of restricted or certified delivery;

(5) written solicitations mailed to prospective clients shall not be made to resemble legal pleadings or other legal documents;

(6) any written solicitation prompted by a specific occurrence involving or affecting the intended recipient of the solicitation or family member shall disclose how the lawyer obtained the information prompting the solicitation;

(7) a written solicitation seeking employment by a specific prospective client in a specific matter shall not reveal on the envelope or on the outside of a self-mailing brochure or pamphlet the nature of the client's legal problem;

(8) if a lawyer knows that a lawyer other than the lawyer whose name or signature appears on the solicitation will actually handle the case or matter or that the case or matter will be referred to another lawyer or law firm, any written solicitation concerning a specific matter shall include a statement so advising the potential client; and

(9) a lawyer shall not send a written solicitation regarding a specific matter if the lawyer knows or reasonably should know that the person to whom the solicitation is directed is represented by a lawyer in the matter.

(c) A lawyer shall not send, nor knowingly permit to be sent, on behalf of the lawyer, the lawyer's firm, the lawyer's partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm a written solicitation to any prospective client for the purpose of obtaining professional employment if:

(1) it has been made known to the lawyer that the person does not want to receive such solicitations from the lawyer;

(2) the written solicitation involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(3) the written solicitation contains a false, fraudulent, misleading, or deceptive statement or claim or makes claims as to the comparative quality of legal services, unless the comparison can be factually substantiated, or asserts opinions about the liability of the defendant or offers assurances of client satisfaction;

(4) the written solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person solicited or a relative of that person if the accident or disaster occurred less than 30 days prior to the solicitation or if the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person solicited makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(5) the written solicitation vilifies, denounces or disparages any other potential party.

(d) The provisions of Rule 4-7.3 shall not apply to services provided by a not-for-profit organization funded in whole or in part by the Legal Services Corporation established by 42 U.S.C. Section 2996(b) or to pro bono services provided free of charge by a not-for-profit organization, a court-annexed program, a bar association, or an accredited law school.

* * *

15.01 DEFINITIONS

As used in this Rule 15 the following terms mean:

(a) "[~~a~~]Accredited program or activity," [~~,~~] a program or activity accredited by The Missouri Bar;

(b) "[~~b~~]Board", the [~~B~~]board of [~~G~~]governors of The Missouri Bar;

(c) [~~"committee", the Supreme Court Committee on Minimum Continuing Legal Education;~~]

"[~~(d) "c~~]"Credit hour," [~~,~~] at least [~~fifty~~] 50 minutes of instruction or the equivalent;

[~~e~~](d) "[~~l~~]Lawyer," [~~,~~] a member of The Missouri Bar [~~except lawyers paying an annual enrollment fee pursuant to Rule 6.01(j)(3)~~];

[~~f~~](e) "[~~reporting year", the twelve~~] Reporting year," the 12 months between July first of one year and June 30th of the following year.

15.02 [RESERVED]

15.03 DUTIES OF THE MISSOURI BAR

The Missouri Bar shall:

(a) Exercise general supervisory authority over the administration of this Rule 15;

(b) Accredit programs and activities and sponsors that satisfy the requirements of this Rule 15;

(c) Foster and encourage the offering of accredited programs and activities;

(d) Report at least annually to this Court [~~and the committee~~] concerning the status of minimum continuing legal education in this state;

(e) Fund the administration of this Rule 15 through enrollment fees paid by members of The Missouri Bar; and

(f) Promulgate regulations necessary to implement this Rule 15. The regulations shall be consistent with the provisions of this Rule 15 and shall become effective [~~sixty~~] 60 days after submission unless disapproved by this Court. This Court may promulgate, amend, revise, or rescind any regulation. Copies of this Rule 15 and the regulations thereto shall be published in a publication of general distribution to all lawyers and shall be furnished to interested parties upon request.

15.04 ACCREDITATION OF PROGRAMS, ACTIVITIES AND SPONSORS

(a) The Missouri Bar may designate a sponsor of continuing legal education programs or activities as an [~~'~~] "accredited sponsor[~~'~~] " if the sponsor has substantial recent experience in offering continuing legal education or a demonstrable ability to organize and effectively present continuing legal education programs and activities.

(b) A program or activity may be an accredited program or activity if it directly contributes to the professional competency of lawyers or judges and has significant intellectual or practical content related to the development or practice of law, professional responsibility, or law office management.

(c) A program or activity offered by an accredited sponsor shall be an accredited program or activity. Continuing legal education programs and activities of identified

sponsors may be accredited programs and activities if so designated by The Missouri Bar. Self-study, videotape, audiotape, or other similar programs or activities may be accredited programs and activities if so designated by The Missouri Bar.

15.05 CONTINUING LEGAL EDUCATION REQUIREMENTS

(a) After July 1, 1988, except as provided in Rule 15.05(c), each lawyer shall complete and report during each reporting year at least [~~fifteen~~] 15 credit hours of accredited programs and activities. Credit hours of accredited programs and activities completed pursuant to [~~subdivisions (e) and (f) of this Rule 15.05~~] Rules 15.05(e) and 15.05(f) may be used to fulfill the requirements of [~~this subdivision (a)~~] Rule 15.05(a). Not more than six other credit hours may consist of self-study, videotape, audiotape or other similar programs or activities that are accredited programs or activities. A speaker at an accredited program or activity may receive credit for preparation time and presentation time. An author of written material published or to be published by an accredited sponsor or in a professional journal or as a monograph may receive credit for research time and composition time.

(b) [~~A~~] For purposes of Rule 15.05(a), a lawyer [~~completing more than fifteen~~] reporting completion of more than 15 credit hours of accredited programs and activities during one reporting year may receive credit in the next succeeding reporting year for the excess credit hours. [~~Credit hours for accredited programs or activities completed within six months before July 1, 1988, may be reported to comply with the provisions of this Rule 15 for the initial reporting year.~~]

(c) A lawyer is not required to complete or report any credit hours in the reporting year in which the lawyer is initially licensed to practice law in this state except as provided in [~~subdivisions (d) and (e) of this Rule 15.05~~] Rules 15.05(d) and 15.05(e). Any lawyer not an active judge who, during a reporting year, has neither engaged in the active [~~private or public~~] practice of law in Missouri nor held herself or himself out as an active practicing lawyer in Missouri shall not be required to complete or report any credit hours during that reporting year. Upon written application and for good cause shown, waivers or extensions of time of the credit hour or reporting requirements of this Rule 15 may be granted in individual cases or classes of cases involving hardship or extenuating circumstances.

(d) A person seeking admission under Rule 8.10 shall, prior to being issued a license, attend The Missouri Bar annual law update program or a continuing legal education program accredited as provided in this Rule 15 that has intellectual and practical content substantially equivalent to The Missouri Bar annual law update program. Attendance shall be no earlier than 12 months prior to the date the application for admission under Rule 8.10 is filed. The person shall report the completion of this requirement to the board of law examiners as the board shall specify.

(e) Each lawyer who[~~, after June 30, 1990~~]:

(1) Between June 30, 1990, and July 1, 2009:

(A) Is admitted to practice law;

[~~2~~](B) Has a license to practice law reinstated, except any license reinstated as a matter of course pursuant to Rule 6.01; or

[~~3~~](C) Becomes an active lawyer after previously declaring inactive status as provided Rule 6.03;

shall complete at least three credit hours of accredited programs and activities devoted exclusively to professionalism, legal or judicial ethics, or malpractice prevention. Such programs and activities shall be completed within [~~twelve~~] 12 months of the event requiring compliance with this Rule 15.05(e). Completion of this requirement shall be reported to The Missouri Bar as specified by The Missouri Bar.

(2) After June 30, 2009:

(A) Is admitted to practice law;

(B) Has a license to practice law reinstated, except any license reinstated as a matter of course pursuant to Rule 6.01; or

(C) Becomes an active lawyer after previously declaring inactive status as provided Rule 6.03;

shall complete at least two credit hours of accredited programs and activities devoted exclusively to professionalism, legal or judicial ethics, or malpractice prevention. Such programs and activities shall be completed within 12 months of the event requiring compliance with Rule 15.05(e). Completion of this requirement shall be reported to The Missouri Bar as specified by The Missouri Bar.

(f) For each professionalism compliance period:

(1) Between July 1, 1990, and June 30, 2008, e[~~E~~]ach lawyer shall complete at least three credit hours of accredited programs and activities devoted exclusively to professionalism, legal or judicial ethics, or malpractice prevention. Credit

hours of accredited programs and activities completed pursuant to [~~subdivision (e) of this~~] Rule 15.05(e) may be used to fulfill the requirements of this subdivision (f). Such programs and activities shall be completed on or before June 30, 1993, and at least every three years thereafter. Completion of this requirement shall be reported to the Missouri Bar as specified by The Missouri Bar[~~.~~] ;

(2) On an after July 1, 2009, each lawyer shall complete and report at least two credit hours of accredited programs and activities devoted exclusively to professionalism, legal or judicial ethics, or malpractice prevention unless the lawyer has not actively practiced law in Missouri during the period or has given notice of inactive status pursuant to Rule 6.03. Completion of this requirement shall be reported to The Missouri Bar as specified by The Missouri Bar.

Credit hours of accredited programs and activities completed pursuant to Rule 15.05(e) may be used to fulfill the requirements of Rule 15.05(f).

Credit hours of accredited programs and activities devoted exclusively to professionalism, legal or judicial ethics, or malpractice prevention during the July 1, 2008, to June 30, 2009, reporting year shall apply to the professionalism compliance period for July 1, 2009, to June 30, 2010.

(g) Each judge of the family court division and each commissioner of the family court division shall complete not later than six months after designation or appointment a course of training in family law accredited by this Court's [~~judicial~~] trial judge education committee. This requirement shall be in addition to the requirements contained in Rule 15.05(a), Rule 15.05(e), and Rule 15.05(f).

Each year thereafter, such judges and commissioners shall complete at least six hours of continuing legal education courses accredited by this Court's judicial education committee relating to family court issues and law. The hours completed on an annual basis may be used to fulfill the requirements of Rule 15.05(a).

Completion of the requirements of this Rule 15.05(g) shall be reported to The Missouri Bar as specified by The Missouri Bar.

This Rule 15.05(g) shall apply to all reporting years beginning on or after July 1, 1993. This Rule 15.05(g) shall not apply to judges who are temporarily transferred or assigned to family court divisions; however judges who have met the requirements of this Rule 15.05(g) shall be preferred for such transfers and assignments.

(h) Each lawyer who is a member of the general assembly may report in each reporting year credit for [~~fifteen~~] 15 hours of continuing legal education for service during that reporting year's regular legislative session. Such credit shall not include credit for programs required by Rule 15.05(f).

15.06 REPORTING REQUIREMENTS - SANCTIONS - REVIEW

(a) On or before July 31st of each year after 1988, each lawyer shall report the number of credit hours of accredited programs or activities in which [~~he~~] the lawyer participated in the preceding reporting year, except that lawyers paying the annual enrollment fee under Rule 6.01(j)(3) for the entire reporting year and lawyers who have given notice of inactive status under Rule 6.03 are not required to report completion or

exemption from the annual requirements of Rules 15.05(a) and 15.05(f). All lawyers must report completion of the requirement of Rule 15.05(e).

(b) Every lawyer failing to meet the requirements of this Rule 15 by September 30 shall be notified by mail addressed to the lawyer's last known address. [~~The notice shall be mailed not later than (October first) of each year.~~] The notice shall advise the lawyer that [~~he~~] the lawyer has not filed the required report or the required number of credit hours and that the lawyer, if subject to Rule 15, may file within [~~thirty~~] 30 days of the date the notice was mailed information establishing compliance with this Rule 15. Within [~~thirty~~] 30 days of the receipt of the information, it shall be determined if the lawyer has participated in the required number of credit hours of accredited programs or activities or if the lawyer is entitled to a waiver of the requirement or an extension of time to comply with the requirement. If it is determined that the lawyer has participated in the required number of credit hours, is entitled to waiver, or is entitled to an extension of time, the lawyer shall be so notified within [~~fifteen~~] 15 days of the decision. If it is determined that the lawyer has not participated in the required number of credit hours, is not entitled to a waiver, and is not entitled to an extension of time, the lawyer shall be so notified.

(c) Every lawyer to whom a notice is sent pursuant to [~~subdivision (b) of this~~] Rule 15.05(b) shall pay a late filing fee of $35.00. Payment of this fee shall accompany the late-filed information establishing compliance with Rule 15. Failure to pay the fee shall be considered a failure to comply with the requirements of Rule 15. The fee

collected pursuant to [~~this subdivision (c)~~] Rule 15.05(c) shall be paid to The Missouri Bar for deposit in the [~~A~~]advisory [~~C~~]committee [~~F~~]fund.

(d) Upon written request filed within [~~fifteen~~] 15 days of the date of notice to the lawyer of the decision concerning compliance with this Rule 15, a hearing shall be granted within [~~thirty~~] 30 days of the date of the request. The hearing shall be held before a panel of three lawyers appointed by the president of The Missouri Bar. The lawyer shall be sent notice of the hearing at least ten days prior to the hearing. At the hearing the lawyer may be represented by counsel, witnesses shall be sworn, and, if requested by the lawyer, a complete electronic record shall be made.

(e) Within [~~fifteen~~] 15 days of the hearing it shall be determined if the lawyer has complied with this Rule 15. The lawyer shall be so notified within five days of the decision.

(f) On or before March 1, The Missouri Bar shall annually report to the clerk of this Court, the chief disciplinary counsel, and the Commission on Retirement, Removal and Discipline, as the case may be, the name of each lawyer not meeting the requirements of this Rule 15. Every lawyer so reported is automatically suspended from the practice of law on the date the report is received by the clerk of this Court. Any lawyer automatically suspended for failing to comply with this Rule 15 shall be retroactively reinstated as a matter of course upon certification to the clerk of this Court by The Missouri Bar that the lawyer is in full compliance with this Rule 15 within three years of the date of the lawyer's suspension and the payment of an additional $100 late fee. The late fee shall be paid to The Missouri Bar for deposit in the [~~A~~]advisory [~~C~~]committee

[~~F~~]fund. Any lawyer not reinstated as a matter of course shall apply for reinstatement as provided in Rule 5.28.