PUBLIC MATTER

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:	Case No. 13-J-15308
PAUL ALAN MANOFF, No. 57697,	NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.	(Bus. & Prof. Code, § 6049.1; Rules Proc. State Bar, rules 5.350 to 5.354)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

The State Bar of California alleges:

JURISDICTION

1. Paul Alan Manoff ("respondent") was admitted to the practice of law in the State of California on December 18, 1973, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

2. On or about August 2, 2013, the Supreme Judicial Court for Suffolk County in the Commonwealth of Massachusetts ordered that respondent be disciplined upon findings that respondent had committed professional misconduct in that jurisdiction as set forth in the Order of Public Reprimand. Thereafter, the decision of the foreign jurisdiction became final.

3. A certified copy of the August 2, 2013, Order of Public Reprimand, the final order of disciplinary action of the foreign jurisdiction, is attached as Exhibit 1 and incorporated by reference.

4. A certified copy of the July 31, 2013 Memorandum of Decision and Order upon which the Order of Public Reprimand was based is attached as Exhibit 2 and incorporated by reference.

5. A copy of the statutes, rules or court orders of the foreign jurisdiction found to have been violated by respondent is attached as Exhibit 3 and incorporated by reference.

6. Respondent's culpability as determined by the foreign jurisdiction indicates that the following California statutes or rules have been violated or warrant the filing of this Notice of Disciplinary Charges: Rule 4-100(A) of the Rules of Professional Conduct [commingling funds]; and Business and Professions Code Section 6103 [failure to obey a court order].

ISSUES FOR DISCIPLINARY PROCEEDINGS

7. The attached findings and final order are conclusive evidence that respondent is culpable of professional misconduct in this state subject only to the following issues:

A. The degree of discipline to impose;

B. Whether, as a matter of law, respondent's culpability determined in the proceeding in the other jurisdiction would not warrant the imposition of discipline in the State of

California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction; and

C. Whether the proceedings of the other jurisdiction lacked fundamental constitutional protection.

8. Respondent shall bear the burden of proof with regard to the issues set forth in subparagraphs B and C of the preceding paragraph.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: August 26, 2014

By: _____
Maria Ghobadi
Deputy Trial Counsel

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No: BD-2013-009

IN RE: Paul Alan Manoff

ORDER OF PUBLIC REPRIMAND

This matter came before the Court, Gants, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(4), with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on February 5, 2013. After a hearing and in accordance with the the Memorandum of Decision and Order of July 31, 2013, it is ORDERED that;

Paul Alan Manoff be, and hereby is, publicly reprimanded, conditioned on his participation in a two (2) year period of accounting probation, during which his trust accounts will be reviewed for compliance with Rule 1.15 not less than once every six (6) months by an accountant reasonably satisfactory to bar counsel and both knowledgeable and experienced in the requirements for lawyer trust accounts.

By the Court, (Gants, J.)

Assistant Clerk

Entered: August 2, 3013

A True Copy

Attest

8/6/13
Date

Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2013-009

IN RE: PAUL ALAN MANOFF

MEMORANDUM OF DECISION AND ORDER

In the underlying proceeding, the Board of Bar Overseers (board) adopted the recommendation of the hearing committee and voted to discipline attorney Paul Alan Manoff by public reprimand, conditioned on a two year period of "accounting probation, during which [Manoff's] trust accounts shall be reviewed for compliance with Mass. R. Prof. C. 1.15 not less than once every six months by an accountant" who is knowledgeable and experienced in the requirements for lawyer trust accounts, and acceptable to bar counsel. Bar counsel objected to having the formal proceedings conclude by public reprimand and demanded that the board file an information with this Court under Supreme Judicial Court Rule 4:01, § 8(6), as appearing in 453 Mass. 1301 (2009), which it did. Bar counsel contends that the appropriate disciplinary sanction in this case is a period of suspension from the practice of law. After hearing, I agree with the board that the appropriate disciplinary sanction for Manoff's misconduct is a public

reprimand, conditioned on the satisfactory completion of a two year period of "accounting probation."

Background. I summarize the relevant facts and conclusions of law found by the hearing committee and adopted by the board. Manoff had a solo law practice in Boston, focusing on representing plaintiffs in employment and contract disputes. He represented many clients on a contingent fee basis and kept his own records. He kept a joint checking account (joint account) with his wife that the couple used to pay their household and personal expenses. He also used this account for business purposes related to his practice of law. Manoff also had a trust account (IOLTA account), but was not aware of the IOLTA rules. He mistakenly believed that an IOLTA account needed to be used only for client funds that he held for an extended period of time. Because the only funds he held were settlement funds that he normally dispersed promptly, Manoff thought they did not need to be held in his IOLTA account.[1] He also failed to perform three-way reconciliations of his check register, individual client ledgers, and bank statements as required by Mass. R. Prof. C. 1.15(f)(1)(E), as appearing in 440 Mass. 1338 (2004); and failed to maintain a chronological check register

[1] In January, 2008, the bank closed Manoff's IOLTA account due to inactivity. On January 31, 2008, he opened a new account that, because of bank error, was not properly designated as an IOLTA account. On learning of the error, Manoff caused the bank to open a proper IOLTA account.

and client ledger and retain them for six years after termination of the representation as required by Mass. R. Prof. C. 1.15(f). He has since completed a trust accounting course designated by bar counsel and changed his banking and accounting methods to comply with the rules.

In January, 2007, a client retained Manoff on a contingent fee basis to represent her in a fee dispute she had with another attorney.[2] By the end of the month, Manoff had settled the client's claims. On February 13, 2007, he received a check for $4,000 from the attorney's malpractice insurer, of which $2,666.67 was owed to the client. He deposited the check into his joint account. He or his wife used at least some of the money due the client for personal expenses because, between February 28 and March 1, the joint account did not have sufficient funds to pay the client. Other than during this two day period, sufficient funds were available in the account. The client received her share of the settlement on April 24, 2007, by check drawn on the joint account. Manoff's mishandling of client funds during this approximately seventy day period was due to his negligence and his focus on the health of his father,

[2] Manoff failed to keep a copy of the contingent fee agreement for seven years in violation of Mass. R. Prof. C. 1.5(c), as appearing in 440 Mass. 1338 (2004).

who was seriously ill and Manoff thought was near death. The temporary mishandling of funds did not cause any deprivation.[3]

In another matter, Manoff deposited a $5,000 settlement check into the joint account on January 2, 2008.[4] On January 16, he issued a check for $3,333.33 to pay the client's share of the settlement. When the client presented the check for payment, first on January 23 and again on January 28, the bank refused to honor the check because the Internal Revenue Service (IRS) had levied the joint account. The client informed Manoff that the check had not cleared, and Manoff explained that the IRS had a levy on the account and told the client that he would pay him as soon as he could. On February 29, Manoff deposited personal funds into a new IOLTA account, and on March 5 he issued a check drawn from that account and payable to his client for $3,358.33, representing the settlement proceeds plus $25.00 to reimburse the client for bank fees relating to the dishonored check. The delay in paying the funds to this client resulted in temporary deprivation that arose from negligent, rather than intentional,

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[3] The hearing committee concluded that Manoff did not intentionally violate Mass. R. Prof C. 1.15(c), which declares that a "lawyer shall promptly deliver to the client . . . any funds or other property that the client . . . [is] entitled to receive." The board concluded that bar counsel "need not show an intent to postpone payment beyond what constitutes prompt payment" to establish a violation of rule 1.15(c), but noted that "[t]he issue here is not so much 'promptness' as deprivation."

[4] The check was issued to Manoff on December 14, 2007.

mishandling of client funds. Because of the levy on the joint account, Manoff deposited personal funds into his new IOLTA account and paid personal creditors by check from this account.

Manoff's conduct in depositing client settlement funds into the joint account violated Mass. R. Prof. C. 1.15(b). His deposit of personal funds into and his issuance of personal checks from his IOLTA account violated Mass. R. Prof. C. 1.15(e)(4).

Additionally, Manoff failed to appear at payment review hearings in numerous small claims cases brought by a court reporter, and capiases issued for his arrest. He allowed default judgments to be entered against him and belatedly paid the judgments. Manoff did not appear at any of these small claims hearings because he was ashamed and did not wish to contest that he owed the court reporter the amounts claimed. By intentionally violating court orders to appear at payment review hearings, Manoff violated Mass. R. Prof. C. 3.4(c), 426 Mass. 1389 (1998); and Mass. R. Prof. C. 8.4(d) and (h), 426 Mass. 1429 (1998).[5]

[5] In a separate matter, Manoff tried and lost a civil case a lawyer had brought against him to recover referral fees. When Manoff failed to pay the judgment, an execution issued. Manoff failed to appear when summonsed for the examination, and another capias was issued. When he learned of the capias, he appeared in court, was purged of contempt, and commenced paying the judgment. The hearing committee credited Manoff's testimony

Before this case, Manoff had no history of discipline. He cooperated fully with bar counsel in its investigation. He repaid in full all persons harmed by his misconduct before bar counsel became involved in this matter.

The board concluded that Manoff's delay in paying settlement funds to his two clients was "a species of carelessness, not wrongful intent or callousness, and it does not warrant suspension." The board noted that the delay in the first case was brief and attributable to Manoff's "neglect and distraction" arising from personal problems, not the absence of funds. It also noted that the delay in the second case arose from the commingling of client funds with personal funds in the joint account, but was caused by the IRS's levy, not any misuse of client funds by Manoff. The board concluded that a public reprimand was appropriate for the trust fund and record keeping violations, and that the capiases arising from his failure to appear at the payment review sessions arose from a single course of events and did not warrant increasing that sanction to suspension.

Standard of review. The court "afford[s] substantial deference to the board's recommended disciplinary sanction." In re Lupo, 447 Mass. 345, 356 (2007), quoting Matter of Griffith,

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that he never received the summons and concluded that no rule violation had occurred.

440 Mass. 500, 507 (2003). See Matter of Doyle, 429 Mass. 1013, 1013 (1999). "When considering a disciplinary sanction, we examine whether the sanction 'is markedly disparate from judgments in comparable cases.'" In re Balliro, 453 Mass. 75, 85 (2009), quoting Matter of Finn, 433 Mass. 418, 423 (2001). The court "need not endeavor to find perfectly analogous cases, nor must we concern ourselves with anything less than marked disparity in the sanctions imposed." Matter of Hurley, 418 Mass. 649, 655 (1994). "Our primary concern in bar discipline cases is 'the effect upon, and perception of, the public and the bar,' and [the court] must therefore consider, in reviewing the board's recommended sanction, 'what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior.' In re Lupo, supra, quoting Matter of Finnerty, 418 Mass. 821, 829 (1994) and Matter of Concemi, 422 Mass. 326, 329 (1996).

Discussion. Bar counsel contends that, where Manoff's negligent misuse of funds resulted in his clients being deprived of funds, a public reprimand is inadequate and he should instead be suspended from the practice of law for an appropriate term.

Under the presumptive standards set forth in Matter of the Discipline of an Attorney, 392 Mass. 827, 836-837 (1984), as clarified in Matter of Schoepfer, 426 Mass. 183, 185-188 & n.2 (1997):

> "Intentional commingling of clients' funds with those of an attorney should be disciplined by public reprimand. Unintentional, careless use of clients' funds should be disciplined by public censure.
>
> "Intentional use of clients' funds, with no intent to permanently or temporarily deprive the client, and no actual deprivation, should be punished by a term of suspension of appropriate length.
>
> "Intentional use, with intent to deprive or with actual deprivation, should be disciplined by disbarment or indefinite suspension."

Here, based on the facts found by the board, which are supported by substantial evidence, Manoff intentionally commingled clients' funds with the business and personal funds in his joint account and, with respect to the first case, he or his wife unintentionally and carelessly used some of these client funds. The board did not find that Manoff ever intentionally used client funds for his personal benefit. The board found no deprivation in the first case, where client funds carelessly were used by Manoff or his wife. The board found temporary deprivation in the second case, not because Manoff had put client funds to his personal use but because the IRS had levied on the joint account where the settlement proceeds were wrongly deposited. Once Manoff learned that the bank had not honored the settlement check he gave to his client because of the IRS levy, he took steps to make his client whole as soon as he obtained the funds to do so, well before his conduct came to the attention of bar counsel. Because Manhoff did not intentionally

use client funds, did not intentionally deprive a client of funds, and acted quickly to cure any deprivation, I conclude that the presumptive sanction is a public reprimand.

I recognize, as bar counsel notes, that suspensions have at times been imposed where an attorney has negligently commingled client and personal or business funds, and carelessly converted settlement or insurance proceeds, resulting in deprivation of funds to the client. See, e.g., Matter of Perlow, 20 Mass. Att'y Disc. R. 451 (2004); Matter of Landolphi, 20 Mass. Att'y Disc. R. 295 (2004); Matter of Blaha, 18 Mass. Att'y Disc R. 68 (2002); Matter of Walker, 17 Mass. Att'y Disc. R. 585 (2001). But these cases relied on by bar counsel involved aggravating factors not present in Manoff's case, and lacked the mitigating factors that are present. For example, in Matter of Landolphi, supra at 295-297, the respondent agreed to a three year suspension after he admitted to negligently misusing funds of three separate clients, depriving one client of funds for almost six years, and only remitting payment after bar counsel filed a petition for discipline against him. In Matter of Perlow, supra at 451-453, the respondent agreed to a suspension of one year and one day after he negligently comingling client and personal funds, used clients' settlement funds to pay personal or business expenses or unrelated clients, and failed to cooperate with bar counsel's investigation. Similarly, in Matter of

Blaha, supra at 68-71, the respondent failed to cooperate with bar counsel's investigation and committed offenses in addition to negligent recordkeeping and temporary deprivation of client funds, resulting in an eighteen month suspension. In Matter of Walker, supra at 594, where the deprivation of funds occurred over a six year period, the single justice did not believe that a public reprimand was appropriate in light of the respondent's two prior private disciplinary matters, one of which involved mishandling of client funds.

The facts of this case more closely resemble Matter of LaPre, 26 Mass. Att'y Disc. R. 302 (2010), where an attorney received a public reprimand where he negligently misused client funds in his IOLTA account, which resulted in a check he wrote to the client being dishonored due to insufficient funds, but restored the amount to his client from his personal funds as soon as he became aware of the deprivation. Similarly, in Matter of McCabe, 25 Mass. Att'y Disc. R. 367, 367-368 (2009), the respondent received a public reprimand where he negligently maintained two separate IOLTA accounts, which resulted in the bank not honoring a check the respondent had issued to a client, but promptly issued a replacement check to the client to repair the problem.

Manoff did not intentionally misuse client funds, promptly cured any deprivation, has completed a trust accounting course

recommended by bar counsel, changed his banking and accounting methods to comply with the rules, and has had no previous disciplinary issues. Additionally, the conduct resulting in the issuance of the capiases involved monies owed to a single court reporter and alone warrants nothing more than an admonition. See, e.g., Admonition No. 04-28, 20 Mass. Att'y Disc. R. 712 (2004). Accordingly, considering the totality of Manoff's conduct and all the surrounding circumstances, and giving the board's thoughtful and careful determination the deference to which it is due, I conclude that the appropriate sanction is a public reprimand conditioned on his participation in a two year period of accounting probation, during which his trust accounts will be reviewed for compliance with Mass. R. Prof. C. 1.15 not less than once every six months by an accountant reasonably satisfactory to bar counsel who is both knowledgeable and experienced in the requirements for lawyer trust accounts.

Conclusion. For the reasons stated above, I affirm the board's decision and order that Manoff be publicly reprimanded with the condition that he participate in a two year period of accounting probation.

Ralph D. Gants
Associate Justice

Entered: July 31, 2013

A True Copy
Attest
8/6/13
Date
Assistant Clerk

unable to dissuade the client from testifying falsely, the lawyer may not stand in the way of the client's absolute right to take the stand and testify. If, during a trial, the lawyer knows that his or her client, while testifying, has made a perjured statement, and the lawyer reasonably believes that any immediate action taken by the lawyer will prejudice the client, the lawyer should wait until the first appropriate moment in the trial and then attempt to persuade the client confidentially to correct the perjury.

[10] In any of these circumstances, if the lawyer is unable to convince the client to correct the perjury, the lawyer must not assist the client in presenting the perjured testimony and must not argue the false testimony to a judge, or jury or appellate court as true or worthy of belief. Except as provided in this rule, the lawyer may not reveal to the court that the client intends to perjure or has perjured himself or herself in a criminal trial.

[11] Reserved.

[12] Reserved.

Duration of Obligation

[13] A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation.

Refusing to Offer Proof Believed to Be False

[14] Generally speaking, a lawyer has authority to refuse to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Whether constitutional requirements affect the resolution of this issue is beyond the scope of these comments.

Ex Parte Proceedings

[15] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision. Rule 3.3(d) does not change the rules applicable in situations covered by specific substantive law, such as presentation of evidence to grand juries, applications for search or other investigative warrants and the like.

[16] When adversaries present a joint petition to a tribunal, such as a joint petition to approve the settlement of a class action suit or the settlement of a suit involving a minor, the proceeding loses its adversarial character and in some respects takes on the form of an ex parte proceeding. The lawyers presenting such a joint petition thus have the same duties of candor to the tribunal as lawyers in ex parte proceedings and should be guided by Rule 3.3(d).

Corresponding ABA Model Rule. Identical in (a) to (d) to Model Rule 3.3 except in (a) (2) and (4); in (b) phrase "including all appeals" added; (e) new.

Corresponding Former Massachusetts Rule. DR 7-102, DR 7-106(B), S.J.C. Rule 3:08, PF 12, DF 13.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused;

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information;

(g) pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) expenses reasonably incurred by a witness in attending or testifying

(2) reasonable compensation to a witness for loss of time in attending or testifying

(3) a reasonable fee for the professional services of an expert witness;

(h) present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in a private civil matter; or

(i) in appearing in a professional capacity before a tribunal, engage in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel, or other person. This paragraph does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation, or another similar factor is an issue in the proceeding.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

[5] Paragraph (g) carries over the provision of former DR 7-109(C) concerning the payment of funds to a witness. Compensation of a witness may not be based on the content of the witness's testimony or the result in the proceeding. A lawyer may pay a witness reasonable compensation for

time lost and for expenses reasonably incurred in attending the proceeding. A lawyer may pay a reasonable fee for the professional services of an expert witness.

[6] Paragraph (h) is taken from former DR 7-105(A), but it prohibits filing or threatening to file disciplinary charges as well as criminal charges solely to obtain an advantage in a private civil matter. The word "private" has been added to make clear that a government lawyer may pursue criminal or civil enforcement, or both criminal and civil enforcement, remedies available to the government. This rule is never violated by a report under Rule 8.3 made in good faith because the report would not be made "solely" to gain an advantage in a civil matter.

[7] Paragraph (i) is taken from former DR 7-106(C)(8) concerning conduct before a tribunal that manifests bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation of any person. When these factors are an issue in a proceeding, paragraph (i) does not bar legitimate advocacy.

Corresponding ABA Model Rule. Identical to Model Rule 3.4(a), (b), (c), (d), (e), and (f); (g) from DR 7-109(C), (h) from DR 7-105, and (i) from DR 7-106(C)(8) are new.

Corresponding Former Massachusetts Rule. DR 7-102(A)(6); DR 7-105; DR 7-106(A) and (C), DR 7-109, S.J.C. Rule 3:08 PF 4, DF 9; See also DR 7-103(B), DR 7-104(A)(2).

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) engage in conduct intended to disrupt a tribunal; or

(d) after discharge of the jury from further consideration of a case with which the lawyer was connected, initiate any communication with a member of the jury without leave of court granted for good cause shown. If a juror initiates a communication with such a lawyer, directly or indirectly, the lawyer may respond provided that the lawyer shall not ask questions of or make comments to a member of that jury that are intended only to harass or embarrass the juror or to influence his or her actions in future jury service. In no circumstances shall such a lawyer inquire of a juror concerning the jury's deliberation processes.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in S.J.C. Rule 3:09, the Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Corresponding ABA Model Rule. Identical to Model Rule 3.5(a), (b) and (c); (d) added from DR 7-108(D).

Corresponding Former Massachusetts Rule. DR 7-106, DR 7-108(D), DR 7-110(B), S.J.C. Rule 3:08, PF 1, DF 1.

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the

been concluded, but the report should be made as soon as practicable thereafter. An immediate report is ethically compelled, however, when a client or third person will likely be injured by a delay in reporting, such as where the lawyer has knowledge that another lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

[4] The duty to report past professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a lawyer assistance program. In that circumstance, providing for the confidentiality of such information encourages lawyers and judges to seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance from these programs. Failure to do so may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. The Rule , therefore, exempts the lawyer from the reporting requirements of paragraphs (a) and (b) with respect to information that would be protected by Rule 1.6 if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer.

Corresponding ABA Model Rule. Different from Model Rule 8.3.

Corresponding Former Massachusetts Rule. None. [DR 1-103(A) was not adopted in Massachusetts].

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in Supreme Judicial Court Rule 4:01, § 3; or

(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.

Comment

[1] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[2] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the

validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyer. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[4] Paragraph (e) prohibits the acceptance of referrals from a referral source, such as court or agency personnel, if the lawyer states or implies, or the client could reasonably infer, that the lawyer has an ability to influence the court or agency improperly.

[5] Paragraph (h) carries forward the provision of Former DR 1-102(A)(6) prohibiting conduct that adversely reflects on that lawyer's fitness to practice law, even if the conduct does not constitute a criminal, dishonest, fraudulent or other act specifically described in the other paragraphs of this rule.

Corresponding ABA Model Rule. Clauses (a), (b), (c), (d), (e), and (f) identical to Model Rule 8.4; clause (g) incorporates obligations set forth in S.J.C. Rule 4:01, § 3; clause (h) comes from DR 1-102(A)(6).

Corresponding Former Massachusetts Rule. DR 1-102, DR 9-101(C). See S.J.C. Rule 4:01, § 3.

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a governmental tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's principal office is located shall be applied, unless the predominant effect of the conduct is in a different jurisdiction, in which case the rules of that jurisdiction shall be applied. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction.

[1A] In adopting Rule 5.5, Massachusetts has made it clear that out-of-state lawyers who engage in practice in this jurisdiction are subject to the disciplinary authority of this state. A great many states have rules that are similar to, or identical with, Rule 5.5, and Massachusetts lawyers therefore need to be aware that they may become subject to the disciplinary rules of another state in certain circumstances. Rule 8.5 deals with the related question of the conflict of law rules that are to be applied when a lawyer's conduct affects multiple jurisdictions. Comments 2-7 state the particular principles that apply.

[1B] There is no completely satisfactory solution to the choice of law question so long as different states have different rules of professional responsibility. When a lawyer's conduct has an effect in another jurisdiction, that jurisdiction may assert that its law of professional responsibility should govern, whether the lawyer was physically present in the jurisdiction or not.

Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

RULE 1.15 SAFEKEEPING PROPERTY

(a) Definitions: **Pre-2004 text**

(1) "Trust property" means property of clients or third persons that is in a lawyer's possession in connection with a representation and includes property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise. Trust property does not include documents or other property received by a lawyer as investigatory material or potential evidence. Trust property in the form of funds is referred to as "trust funds."

(2) "Trust account" means an account in a financial institution in which trust funds are deposited. Trust accounts must conform to the requirements of this rule.

(b) Segregation of Trust Property. A lawyer shall hold trust property separate from the lawyer's own property.

(1) Trust funds shall be held in a trust account, except that advances for costs and expenses may be held in a business account.

(2) No funds belonging to the lawyer shall be deposited or retained in a trust account except that:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein, and

(ii) Trust funds belonging in part to a client or third person and in part currently or potentially to the lawyer shall be deposited in a trust account, but the portion belonging to the lawyer must be withdrawn at the earliest reasonable time after the lawyer's interest in that portion becomes fixed. A lawyer who knows that the right of the lawyer or law firm to receive such

portion is disputed shall not withdraw the funds until the dispute is resolved. If the right of the lawyer or law firm to receive such portion is disputed within a reasonable time after notice is given that the funds have been withdrawn, the disputed portion must be restored to a trust account until the dispute is resolved.

(3) Trust property other than funds shall be identified as such and appropriately safeguarded.

(c) Prompt Notice and Delivery of Trust Property to Client or Third Person. Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or as otherwise permitted by law or by agreement with the client or third person on whose behalf a lawyer holds trust property, 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.

(d) Accounting.

(1) Upon final distribution of any trust property or upon request by the client or third person on whose behalf a lawyer holds trust property, the lawyer shall promptly render a full written accounting regarding such property.

(2) On or before the date on which a withdrawal from a trust account is made for the purpose of paying fees due to a lawyer, the lawyer shall deliver to the client in writing (i) an itemized bill or other accounting showing the services rendered, (ii) written notice of amount and date of the withdrawal, and (iii) a statement of the balance of the client's funds in the trust account after the withdrawal.

(e) Operational Requirements for Trust Accounts.

(1) All trust accounts shall be maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person on whose behalf the trust property is held, except that all funds required by this rule to be deposited in an IOLTA account shall be maintained in this Commonwealth.

(2) Each trust account title shall include the words "trust account," "escrow account," "client funds account," "conveyancing account," "IOLTA account," or words of similar import indicating the fiduciary nature of the account. Lawyers maintaining trust accounts shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts.

(3) No withdrawal from a trust account shall be made by a check which is not prenumbered. No withdrawal shall be made in cash or by automatic teller machine or any similar method. No withdrawal shall be made by a check payable to "cash" or "bearer" or by any other method which does not identify the recipient of the funds.

(4) Every withdrawal from a trust account for the purpose of paying fees to a lawyer or reimbursing a lawyer for costs and expenses shall be payable to the lawyer or the lawyer's law firm.

(5) Each lawyer who has a law office in this Commonwealth and who holds trust funds shall deposit such funds, as appropriate, in one of two types of interest-bearing accounts: either (i) a pooled account ("IOLTA account") for all trust funds which in the judgment of the lawyer are nominal in amount, or are to be held for a short period of time, or (ii) for all other trust funds, an individual account with the interest payable as directed by the client or third person on whose behalf the trust property is held. The foregoing deposit requirements apply to funds received by lawyers in connection with real estate transactions and loan closings, provided, however, that a trust account in a lending bank in the name of a lawyer representing the lending bank and used exclusively for depositing and disbursing funds in connection with that particular bank's loan transactions, shall not be required but is permitted to be established as an IOLTA account. All IOLTA accounts shall be established in compliance with the provisions of paragraph (g) of this rule.

(6) Property held for no compensation as a custodian for a minor family member is not subject to the Operational Requirements for Trust Accounts set out in this paragraph (e) or to the Required Accounts and Records in paragraph (f) of this rule. As used in this subsection, "family member" refers to those individuals specified in section (e)(2) of rule 7.3.

(f) Required Accounts and Records: Every lawyer who is engaged in the practice of law in this Commonwealth and who holds trust property in connection with a representation shall maintain complete records of the receipt, maintenance, and disposition of that trust property, including all records required by this subsection. Records shall be preserved for a period of six years after termination of the representation and after distribution of the property. Records may be maintained by computer subject to the requirements of subparagraph 1G of this paragraph (f) or they may be prepared manually.

(1) Trust Account Records. The following books and records must be maintained for each trust account:

A. Account Documentation. A record of the name and address of the bank or other depository; account number; account title; opening and closing dates; and the type of account, whether pooled, with net interest paid to the IOLTA Committee (IOLTA account), or account with interest paid to the client or third person on whose behalf the trust property is held (including master or umbrella accounts with individual subaccounts).

B. Check Register. A check register recording in chronological order the date and amount of all deposits; the date, check or transaction number, amount, and payee of all disbursements, whether by check, electronic transfer, or other means; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the account.

C. Individual Client Records. A record for each client or third person for whom the lawyer received trust funds documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person, including a subsidiary ledger or ledger for each client matter for which the lawyer receives trust funds documenting each receipt and disbursement of the funds of the client or third person with respect to such matter. A lawyer shall not disburse funds from the trust account that would create a negative balance with respect to any individual client.

D. Bank Fees and Charges. A ledger or other record for funds of the lawyer deposited in the trust account pursuant to paragraph (b)(2)(i) of this rule to accommodate reasonably expected bank charges. This ledger shall document each deposit and expenditure of the lawyer's funds in the account and the balance remaining.

E. Reconciliation Reports. For each trust account, the lawyer shall prepare and retain a reconciliation report on a regular and periodic basis but in any event no less frequently than every sixty days. Each reconciliation report shall show the following balances and verify that they are identical:

(i) The balance which appears in the check register as of the reporting date.

(ii) The adjusted bank statement balance, determined by adding outstanding deposits and other credits to the bank statement balance and subtracting outstanding checks and other debits from the bank statement balance.

(iii) For any account in which funds are held for more than one client matter, the total of all client matter balances, determined by listing each of the individual client matter records and the balance which appears in each record as of the reporting date, and calculating the total. For the purpose of the calculation required by this paragraph, bank fees and charges shall be considered an individual client record. No balance for an individual client may be negative at any time.

F. Account Documentation. For each trust account, the lawyer shall retain contemporaneous records of transactions as necessary to document the transactions. The lawyer must retain:

(i) bank statements.

(ii) all transaction records returned by the bank, including canceled checks and records of electronic transactions.

(iii) records of deposits separately listing each deposited item and the client or third person for whom the deposit is being made.

G. Electronic Record Retention. A lawyer who maintains a trust account record by computer must maintain the check register, client ledgers,

and reconciliation reports in a form that can be reproduced in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(2) Business Accounts. Each lawyer who receives trust funds must maintain at least one bank account, other than the trust account, for funds received and disbursed other than in the lawyer's fiduciary capacity.

(3) Trust Property Other than Funds. A lawyer who receives trust property other than funds must maintain a record showing the identity, location, and disposition of all such property.

(g) Interest on Lawyers' Trust Accounts.

(1) The IOLTA account shall be established with any bank, savings and loan association, or credit union authorized by Federal or State law to do business in Massachusetts and insured by the Federal Deposit Insurance Corporation or similar State insurance programs for State-chartered institutions. At the direction of the lawyer, funds in the IOLTA account in excess of $100,000 may be temporarily reinvested in repurchase agreements fully collateralized by U.S. Government obligations. Funds in the IOLTA account shall be subject to withdrawal upon request and without delay.

(2) Lawyers creating and maintaining an IOLTA account shall direct the depository institution:

(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the IOLTA Committee;

(ii) to transmit with each remittance to the IOLTA Committee a statement showing the name of the lawyer who or law firm which deposited the funds; and

(iii) at the same time to transmit to the depositing lawyer a report showing the amount paid, the rate of interest applied, and the method by which the interest was computed.

(3) Lawyers shall certify their compliance with this rule as required by S.J.C. Rule 4:02, subsection (2).

(4) This court shall appoint members of a permanent IOLTA Committee to fixed terms on a staggered basis. The representatives appointed to the committee shall oversee the operation of a comprehensive IOLTA program, including:

(i) the receipt of all IOLTA funds and their disbursement, net of actual expenses, to the designated charitable entities, as follows: sixty-seven percent (67%) to the Massachusetts Legal Assistance Corporation and the remaining thirty-three percent (33%) to other designated charitable entities in such proportions as the Supreme Judicial Court may order;

(ii) the education of lawyers as to their obligation to create and maintain IOLTA accounts under Rule 1.15(h);

(iii) the encouragement of the banking community and the public to support the IOLTA program;

(iv) the obtaining of tax rulings and other administrative approval for a comprehensive IOLTA program as appropriate;

(v) the preparation of such guidelines and rules, subject to court approval, as may be deemed necessary or advisable for the operation of a comprehensive IOLTA program;

(vi) establishment of standards for reserve accounts by the recipient charitable entities for the deposit of IOLTA funds which the charitable entity intends to preserve for future use; and

(vii) reporting to the court in such manner as the court may direct.

(5) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall receive IOLTA funds from the IOLTA Committee and distribute such funds for approved purposes. The Massachusetts Legal Assistance Corporation may use IOLTA funds to further its corporate purpose and other designated charitable entities may use IOLTA funds either for (a) improving the administration of justice or (b) delivering civil legal services to those who cannot afford them.

(6) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall submit an annual report to the court describing their IOLTA activities for the year and providing a statement of the application of IOLTA funds received pursuant to this rule.

(h) Dishonored Check Notification.

All trust accounts shall be established in compliance with the following provisions on dishonored check notification:

(1) A lawyer shall maintain trust accounts only in financial institutions which have filed with the Board of Bar Overseers an agreement, in a form provided by the Board, to report to the Board in the event any properly payable instrument is presented against any trust account that contains insufficient funds, and the financial institution dishonors the instrument for that reason.

(2) Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days notice in writing to the Board.

(3) The Board shall publish annually a list of financial institutions which have signed agreements to comply with this rule, and shall establish rules and procedures governing amendments to the list.

(4) The dishonored check notification agreement shall provide that all reports made by the financial institution shall be identical to the notice of dishonor customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors. Such reports shall be made simultaneously with the notice of dishonor and within the time provided by law for such notice, if any.

(5) Every lawyer practicing or admitted to practice in this Commonwealth shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(6) The following definitions shall be applicable to this subparagraph:

(i) "Financial institution" includes (a) any bank, savings and loan association, credit union, or savings bank, and (b) with the written consent of the client or third person on whose behalf the trust property is held, any other business or person which accepts for deposit funds held in trust by lawyers.

(ii) "Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of this Commonwealth, upon presentation of an instrument which the institution dishonors.

(iii) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this Commonwealth.

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. Separate trust accounts are warranted when administering estate monies or acting in similar fiduciary capacities.

[2] In general, the phrase "in connection with a representation" includes all situations where a lawyer holds property as a fiduciary, including as an escrow agent. For example, an attorney serving as a trustee under a trust instrument or by court appointment holds property "in connection with a representation". Likewise, a lawyer serving as an escrow agent in connection with litigation or a transaction holds that property "in connection with a representation". However, a lawyer serving as a fiduciary who is not actively practicing law does not hold property "in connection with a representation."

[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 must be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. 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. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[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] How much time should elapse between the receipt of funds by the lawyer and notice to the client or third person for whom the funds are held depends on the circumstances. By example, notice must be furnished immediately upon receipt of funds in settlement of a disputed matter, but a lawyer acting as an escrow agent or trustee routinely collecting various items of income may give notice by furnishing a complete statement of receipts and expenses on a regular periodic basis satisfactory to the client or third person.

Notice to a client or third person is not ordinarily required for payments of interest and dividends in the normal course, provided that the lawyer properly includes all such payments in regular periodic statements or accountings for the funds held by the lawyer.

[7] Paragraph (e)(3) states the general rule that all withdrawals and disbursements from trust account must be made in a manner which permits the recipient or payee of the withdrawal to be identified. It does not prohibit electronic transfers or foreclose means of withdrawal which may be developed in the future, provided that the recipient of the payment is identified as part of the transaction. When payment is made by check, the check must be payable to a specific person or entity. A prenumbered check must be used, except that starter checks may be used for a brief period between the opening of a new account and issuance of numbered checks by the bank or depository.

[8] Paragraph (f) lists records that a lawyer is obliged to keep in order to comply with the requirement that "complete records" be maintained. Additional records may be required to document financial transactions with clients or third persons. Depending on the circumstances, these records could include retainer, fee, and escrow agreements and accountings, including RESPA or other real estate closing statements, accountings in contingent fee matters, and any other statement furnished to a client or third person to document receipt and disbursement of funds.

[9] The "Check Register," "Individual Client Ledger" and "Ledger for Bank Fees and Charges" required by paragraph (f)(1) are all chronological records of transactions. Each entry made in the check register must have a corresponding entry in one of the ledgers. This requirement is consistent with manual record keeping and also comports with most software packages. In addition to the data required by paragraph (f)(1)(B), the source of the deposit and the purpose of the disbursement should be recorded in the check register and appropriate ledger. For non-IOLTA accounts, the dates and amounts of interest accrual and disbursement, including disbursements from accrued interest to defray the costs of maintaining the account, are among the transactions which must be recorded. Check register and ledger balances should be calculated and recorded after each transaction or series of related transactions.

[10] Periodic reconciliation of trust accounts is also required. Generally, trust accounts should be reconciled on a monthly basis so that any errors can be corrected promptly. Active, high-volume accounts may require more frequent reconciliations. A lawyer must reconcile all trust accounts at least every sixty days.

The three-way reconciliation described in paragraph (f)(1)(E) must be performed for any account in which funds related to more than one client matter are held. The reconciliation described in paragraph (f)(1)(E)(iii) need not be performed for accounts which only hold the funds of a single client or third person, but the lawyer must be sure that the balance in that account corresponds to the balance in the individual ledger maintained for that client or third person.

The method of preparation and form of the periodic reconciliation report will depend upon the volume of transactions in the accounts during the period covered by the report and whether the lawyer maintains records of the account manually or electronically. By example, for an inactive single-client account for which the lawyer keeps records manually, a written record that the lawyer has reconciled the account statement from the financial institution with the check register maintained by the lawyer may be sufficient.

[11] Lawyers who maintain records electronically should back up data on a regular basis. For moderate to high-volume trust accounts, weekly or even daily backups may be appropriate.

Corresponding ABA Model Rule. Different from Model Rule 1.15.

Corresponding Former Massachusetts Rule. DR 9-102, DR 9-103.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 13-J-15308

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

☒ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ **By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s_ at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 71969008911110068609 at Los Angeles, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
Paul Alan Manoff	47 Winter St 4th Fl Boston, MA 02108	Electronic Address	

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: August 27, 2014

SIGNED: Juli Finnila

JULI FINNILA
Declarant