



Utah Supreme Court
Advisory Committee on the Rules of Professional Conduct
Meeting Agenda
Cory Talbot, Chair

Location: Virtually via [Webex Link](#)

Date: August 6, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Cory Talbot
Discussion: Rule 1.15 – unclaimed and unidentified property in IOLTA accounts.	Tab 2	Kim Paulding
Information: Recommendations for new members have been submitted to the Supreme Court for two attorneys, and one academic. LPP seat vacant.		Cory Talbot

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

- Referral fees
- Rule 1.0

Rules of Professional Conduct Committee Website: [Link](#)

Meeting Schedule:

Jan 2 • Feb 6 • Mar 5 • April 2 • May 7 • June 4 • Aug 6 • Sep 3 • Oct 1 • Nov 5 • Dec 3

Tab 1



Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct

[Draft] Meeting Minutes

June 4, 2024

Utah Law and Justice Center & Zoom
4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Corey Talbot (Co-Chair)
Jurhee Rice (Vice-Chair)
Adam Bondy
Lynda Viti
Alyson McAllister
Robert Gibbons
Mark Nickel
Mark Hales
Dane Thorley
Gary Sackett (emeritus)
Christine Greenwood (ex officio)
Hon. M. Alex Natt, Recording
Secretary

Excused: Hon. Amy Oliver, Ashley
Gregson, Ian Quiel, Robert Gibbons,
Hon. James Gardner, Hon. Craig Hall,
Sheradee Fleming

Staff:

Stacy Haacke

Guests:

1. Welcome, Approval of the May 7, 2024 meeting minutes (Mr. Talbot)

Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:02 p.m.

Chair Talbot asked for a Motion to approve the May 7, 2024 meeting minutes. It was noted that Ms. Rice was incorrectly listed as Co-Chair and in future she will be recognized correctly as Vice Chair. Ms. Greenwood noted that she was listed as present for the meeting but was in fact excused. With those corrections, Mark Nickel moved for approval. Alyson McAllister seconded. The Motion passed unanimously.

2. Rule 1.0 (Mr. Talbot)

Mr. Talbot recognized that this will be Gary Sackett's last meeting after a 30-year service to the Bar. Mr. Sackett reflected on his long tenure and gave the Committee the history of Rule 1.0 and his counsel and opinion on how the Rules in general should be written, interpreted, and applied.

Mr. Talbot suggested that he raise with the Supreme Court whether this Committee should engage in a definitional revision of the Rules so that they would comport with the ABA model rules.

The Committee discussed the redline changes proposed by Mr. Sackett. Mr. Talbot inquired about the definition of a "Public-facing office" and discussion ensued.

Ms. McAllister inquired about the definition of "legal fees" which appears to have been omitted from the comment in recent revisions. Mr. Talbot asked Ms. McAllister to review the history of this issue and report back to the Committee at its next meeting.

3. Rule 1.4 Renumbering (Mr. Talbot)

The non-substantive changes (re-numbering, grammatical changes) are deemed approved by the Committee.

The next meeting of the Committee is August 6, 2024.

The meeting was adjourned at 4:39 p.m.

Tab 2

1 **Rule 1.15. Safekeeping Property.**

2 *Effective: 11/1/2005*

3 (a) A lawyer shall hold property of clients or third persons that is in a lawyer's
4 possession in connection with a representation separate from the lawyer's own
5 property. Funds shall be kept in a separate account maintained in the state where the
6 lawyer's office is situated or elsewhere with the consent of the client or third person.

7 The account may only be maintained in a financial institution that agrees to report to
8 the Office of Professional Conduct in the event any instrument in properly payable
9 form is presented against an attorney trust account containing insufficient funds,
10 irrespective of whether or not the instrument is honored. Other property shall be
11 identified as such and appropriately safeguarded. Complete records of such account
12 funds and other property shall be kept by the lawyer and shall be preserved for a
13 period of five years after termination of the representation.

14 (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole
15 purpose of paying bank service charges on that account, but only in an amount
16 necessary for that purpose.

17 (c) A lawyer shall deposit into a client trust account legal fees and expenses that have
18 been paid in advance, to be withdrawn by the lawyer only as fees are earned or
19 expenses incurred.

20 (d) Upon receiving funds or other property in which a client or third person has an
21 interest, a lawyer shall promptly notify the client or third person. Except as stated in
22 this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall
23 promptly deliver to the client or third person any funds or other property that the client
24 or third person is entitled to receive and, upon request by the client or third person,
25 shall promptly render a full accounting regarding such property.

26 (e) When in the course of representation a lawyer is in possession of property in which
27 two or more persons (one of whom may be the lawyer) claim interests, the property

28 shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall
29 promptly distribute all portions of the property as to which the interests are not in
30 dispute.

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32 Comment

33 [1] A lawyer should hold property of others with the care required of a professional
34 fiduciary. Securities should be kept in a safe deposit box, except when some other form
35 of safekeeping is warranted by special circumstances. All property which is the
36 property of clients or third persons, including prospective clients, must be kept separate
37 from the lawyer's business and personal property and, if monies, in one or more trust
38 accounts. Separate trust accounts may be warranted when administering estate monies
39 or acting in similar fiduciary capacities. In addition to normal monthly maintenance
40 fees on each account, the lawyers can anticipate that financial institutions may charge
41 additional fees for reporting overdrafts in accordance with this Rule. A lawyer should
42 maintain on a current basis books and records in accordance with generally accepted
43 accounting practice and comply with any recordkeeping rules established by law or
44 court order. See, e.g., ABA Model Financial Recordkeeping Rule.

45 [2] While normally it is impermissible to commingle the lawyer's own funds with client
46 funds, paragraph (b) provides that it is permissible when necessary to pay bank service
47 charges on that account. Accurate records must be kept regarding which part of the
48 funds are the lawyer's.

49 [3] Lawyers often receive funds from third parties from which the lawyer's fee will be
50 paid. The lawyer is not required to remit to the client funds that the lawyer reasonably
51 believes represent fees owed. However, a lawyer may not hold funds to coerce a client
52 into accepting the lawyer's contention. The disputed portion of the funds must be kept
53 in a trust account, and the lawyer should suggest means for prompt resolution of the

54 dispute, such as arbitration. The undisputed portion of the funds shall be promptly
55 distributed.

56 [4] Paragraph (e) also recognizes that third parties may have lawful claims against
57 specific funds or other property in a lawyer's custody, such as a client's creditor who
58 has a lien on funds recovered in a personal injury action. A lawyer may have a duty
59 under applicable law to protect such third-party claims against wrongful interference
60 by the client. In such cases, when the third-party claim is not frivolous under applicable
61 law, the lawyer must refuse to surrender the property to the client until the claims are
62 resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the
63 client and the third party, but, when there are substantial grounds for dispute as to the
64 person entitled to the funds, the lawyer may file an action to have a court resolve the
65 dispute.

66 [5] The obligations of a lawyer under this Rule are independent of those arising from
67 activity other than rendering legal services. For example, a lawyer who serves as an
68 escrow agent is governed by the applicable law relating to fiduciaries even though the
69 lawyer does not render legal services in the transaction and is not governed by this
70 Rule.

71 [6] A lawyers' fund for client protection provides a means through the collective efforts
72 of the Bar to reimburse persons who have lost money or property as a result of
73 dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must
74 participate where it is mandatory, and, even when it is voluntary, the lawyer should
75 participate.

76 [6a] This Rule is identical to ABA Model Rule 1.15 except it incorporates two sentences
77 that were added to the prior version of this Rule in 1997. These two sentences are the
78 third sentence of paragraph (a) of the Rule and the corresponding fifth sentence of
79 Comment [1].

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