

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Amendment)
of the OREGON RULES OF) ORDER NO. 11-077
PROFESSIONAL CONDUCT)
) ORDER AMENDING OREGON
) RULES OF PROFESSIONAL
) CONDUCT 1.15-2 and 5.5
)
)

At its public meeting on December 7, 2011, the court considered and approved the amendment of Oregon Rules of Professional Conduct 1.15-2 to delete subsection (m). This is the rule that obligates lawyers to file an annual certification disclosing the existence and location of any lawyer trust accounts. Repeal of RPC 1.15(m) will complete the process of making IOLTA compliance certification an administrative rather than a disciplinary matter for Oregon lawyers.

Oregon Rules of Professional Conduct 5.5 gives out-of-state lawyers limited permission to provide legal services in jurisdictions where they are not licensed to practice. The proposed amendment to RPC 5.5 will extend the malpractice coverage requirement (or proof of notice to the client that no such insurance is carried) to out-of-state-lawyers participating in arbitrations in Oregon, but not to out-of-state lawyers who provide other legal services temporarily in Oregon.

The rules changes are set out as follows (deleted text is in italics and brackets and new text is underlined).

Rule 1.15-2 IOLTA Accounts and Trust Account Overdraft Notification

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest (“net interest”) shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

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[(m) Every lawyer shall certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and this rule. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of establishing the account, on a form approved by the Oregon Law Foundation].

[(n) m) For the purposes of paragraph (h)(3), “service charges” are limited to the institution’s following customary check and deposit processing charges: monthly maintenance fees, per item check charges, items deposited charges and per deposit charges. Any other fees or transactions costs are not “service charges” for purposes of paragraph (h)(3) and must be paid by the lawyer

or law firm.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and

(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer

(i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or

(ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

IT IS HEREBY ORDERED that Oregon Rules of Professional Conduct 1.15-2 and 5.5 be amended and are effective January 1, 2012.

Dated this 8th day of December, 2011.



Paul J. De Muniz
Chief Justice