

Family & Juvenile Law Section Council Minutes of December 13, 2006 Meeting

1. The minutes of the November 8, 2006 meeting were approved.

2. Budget/Treasurer's Report

There was no Treasurer's Report this month. We wish a speedy recovery to Treasurer Mary Sanders, who had surgery recently. Cynthia Callahan will cover BAG award in her absence; Vince Wills will cover MICPEL.

3. Committee Reports:

A. MICPEL:

1. Hot Topics February 9, 2007 – packet to go out from MICPEL by the end of December to presenters.
2. QDRO seminar at end of April 2007. Details as we get closer.
3. The MICPEL Committee will meet mid-January to discuss the QDRO seminar in detail and to plan for the evening series, which all agreed should be designed for one practice level.
4. Members: Martha Sitterding/Vince Wills, Jolie Weinberg, Deborah Webb, Irwin Goldberg/Walter Herbert, Alisa Cummins, Mary Sanders

B. Newsletter

Most of the next issue is together and will go out before the first of the year to be printed. Walter Herbert is soliciting ideas and articles for the 3rd issue

Good job, Walter!

C. Legislation – Dorothy Fait reported that the committee was having its first Friday conference call of the 2007 Legislative Season on 12/22 to plan for areas of responsibility

Kathleen Dumais is Parliamentarian and head of Family Law subcommittee of the House Judiciary Committee.

This year is the “learning curve” year, as the Legislature re-forms. We'll be working on child support bills and others to be addressed as the session gets underway.

Erin Gable did an article for the December Section newsletter.

Danielle Cover (Women's Law Center) will be able to assist with some research on child support.

- D. Annual Meeting – (Marc Noren) The committee held a meeting at Barry Dalnekoff's office in Annapolis in early December.

This will be a Full Bench/Bar presentation and likely a full house attending. Plans are still forming but initial thoughts are to have a serious presentation on family divisions with a moderator, with a humorous segment to follow.

4. Old Business:

- A. Reunion – Acting Chair Jolie Weinberg

Savage Mill and Loew's in Annapolis are the two leading contenders for location.

- B. Survey:

Technical issues are being resolved with the Maryland State Bar Association and the survey should be out during January.

- C. Change to Rule. 1.15, Maryland Lawyers' Rules of Professional Conduct

Attached is Judge Harrell's letter explaining the revisions proposed.

The Maryland State Bar Association took no position on the proposed rule revision, so we must do the same.

- D. Craig Little on Maryland State Bar Association BOG news

- 1. Cell phone/computer policy – to be compiled from county data into a statewide proposal
- 2. The BOG is accepting applications for next term. There are three spots for 2-year terms.

- E. President Stacy Siegel reported that :

1. People Magazine is seeking information for an article on parental abuse (by children). Contact Stacy if you are interested in contributing.
2. The MSBA mid-year meeting will be held in the Dominican Republic. Stacy and others, including Alisa Cummins, will be making a presentation at the meeting, along the lines of a "hot tips" format..

5. The meeting adjourned at 7:30 p.m.
6. The next meeting is scheduled to take place in Annapolis, at Middleton Tavern, on January 9, 2007.

ATTENDEES:

Stacy Siegel, Chair
Marc Noren, Chair Elect
Cindy Callahan, Secretary
Vince Wills
Jolie Weinberg
Erin Gable
Craig J. Little
Irwin Goldberg
Alisa Cummins
Dodie Fait
Dorothy Lennig
Deborah Webb
Walter Herbert
Paula Price
Martha Sitterding
Helen Harrington
Ron Bergman
Paul Reinstein
Chris Nicholson



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Edward J. Gilliss
President

Alison L. Asti
President-Elect

Katherine Kelly Howard
Secretary

John P. Kudel
Treasurer

Paul V. Carlin
Executive Director

TO: MSBA Ethics Committee
MSBA Rules of Practice Committee
MSBA Section Chairs

FROM: Edward J. Gilliss, President

RE: Proposed amendments to Rule 1.15 of the Rules
of Professional Conduct

DATE: October 30, 2006

Enclosed please find Judge Glenn Harrell's letter to me regarding proposed changes to MRPC 1.1.5(b) regarding safe keeping and record keeping of client property.

I send it to you, at Judge Harrell's request for your information and consideration as well as to receive any comments your Committee or Section might have regarding the proposals.

If you do have comments, please feel free to communicate them directly to Judge Harrell, but with a copy to me, so we can evaluate if the Board should comment on proposals as well.

Thank you for your good efforts on behalf of the MSBA.

GLENN T. HARRELL, JR.
JUDGE
COURT OF APPEALS OF MARYLAND



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October 23, 2006

Edward J. Gilliss, Esq.
President,
Maryland State Bar Association, Inc.
c/o 102 West Pennsylvania Ave.
Suite 600
Towson, MD 21204

Re: Proposed Amendment to Maryland Rule
Of Professional Conduct (MRPC) 1.15
("Safekeeping Property" - Record-Keeping
For Trust Accounts)


Dear President Gilliss:

I transmit here a proposed amendment to MRPC 1.15 (b). The proposal was drafted by an informal "committee" composed of myself and David Downes, Esquire, Mel Hirshman, Esquire, and Glenn Grossman, Esquire, of the Attorney Grievance Commission. I ask that you share the proposal with those Sections of the Maryland State Bar Association you think may be interested in its contents. I concurrently am disseminating it to the Court of Appeals's Standing Committee on Rules of Practice and Procedure, local bar associations around the State, and pertinent specialty bars for their respective considerations. The Court of Appeals is aware of this transmittal. I have requested that the Court hold a public hearing on it (or an amended version) on one of its March 2007 oral argument dates. Prior to then, I hope to solicit as much input as possible from interested groups and persons.

At the annual Maryland Judicial Conference held in May 2006 in Cambridge, the Court met with representatives of the Attorney Grievance Commission, among other court-related bodies, to discuss issues of general concern. One concern was the relative frequency of complaints against attorneys in which MRPC 1.15 and related rules were implicated. The Court sees only a few of the total complaints, usually the most serious or where the Commission and a respondent are unable to agree on a disposition. Even at that, the Court notes the following fairly recent representative cases in which a violation of MRPC 1.15 was a central facet: *AGC v. Obi*, 393 Md. 643 (2006); *AGC v. Rose*, 391 Md. 101 (2006); *AGC v. McLain*, 389 Md. 123 (2005); *AGC v. Glenn*, 386 Md. 653 (2005); *AGC v. Zuckerman*, 386 Md. 341 (2005); *AGC v. Auwah*, 374 Md. 505 (2003); *AGC v. Jeter*, 374 Md. 80 (2003); *AGC v. DiCicco*, 369 Md. 662 (2002); and *AGC v. Briscoe*, 357 Md. 554 (2000). The respondents in these cases and others not reaching the Court, but handled by the Commission, cut across many categorical lines – youth and seniority; relative inexperience and long

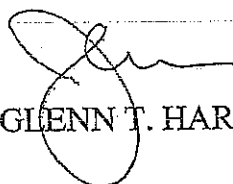
experience; and sole practitioners and practitioners in firms. In many of those cases, violation of the generally-framed record-keeping requirement of MRPC 1.15 (a) was attributed to respondents' lack of knowledge of what constitutes proper record-keeping regarding trust monies. The Rule gives little or no specific guidance on that score. Consideration seems appropriate as to what the Court may do to address the situation better.

Many other State judiciaries take a tact of supplying greater specificity in their analogous record-keeping rules. For example, Virginia, Massachusetts, Minnesota, New Mexico, Florida, and North Carolina, states that our "committee" consulted in drafting our proposal, spell-out minimum expectations for trust account record-keeping. We followed their examples in composing the enclosure. Our intent is to provide the Bar with a better understanding on the "front-end" of what is expected of practitioners and thereby avoid traps for the unwary.

We would be pleased to respond to any bar group's request to meet and discuss the proposal before the Court considers the matter formally in March 2007. We are open to considering modifications to the proposal. Should the Court determine to adopt the proposal, "as is" or amended, we would seek a deferred effective date of 1 January 2008 in order to allow adequate additional outreach to the Bar, including a hoped-for presentation at the MSBA's annual meeting in June 2007 in Ocean City, with specific vendors present who have items "off the shelf" that could assist practitioners in complying.

My "committee" stands ready to meet with and answer the requests of the Executive Committee, Board of Governors, or any Section. Thank you for your consideration of this matter.

Best,



GLENN T. HARRELL, JR.

cc: Mr. Paul V. Carlin,
Executive Director,
Maryland State Bar Association, Inc.
520 W. Fayette Street
Baltimore, MD 21201

COA Judges
David Downes, Esq.
Mel Hirshman, Esq.
Glenn Grossman, Esq.

Key: Underlining indicates new language; ~~shading~~ represents omitted language

Proposed New MRPC 1.15 (b)

Rule 1.15. Safekeeping Property.

(a) 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. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and of other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) The following books and records must be maintained for funds and property received and disbursed for clients or for third persons:

1. An identification of all trust accounts maintained, including the name of the bank of other depository, account number, account name, date account opened, and an agreement with the bank establishing each account and its interest bearing nature.

2. A check register for each account that chronologically shows all deposits and checks.

a. Each deposit entry must include the date of the deposit, the amount, the identity of the client(s) or third person for whom the

funds were deposited, the purpose of the deposit, and the source of the funds.

b. Each check entry must include the date the check was issued, the payee, the amount, the identity of the client or third person for whom the check was issued (if not the payee), and the purpose of the check.

3. A ledger for each client matter in which the lawyer receives trust funds must be maintained. For every trust account transaction, a lawyer must record on the appropriate client ledger: the date of receipt or disbursement; the amount and source of each deposit; the amount of each disbursement; the payee and check number (for disbursements); the purpose of the transaction; and, the balance of funds remaining in the account in connection with the client matter. A lawyer shall not disburse funds from a trust account that would create a negative balance in connection with an individual client matter.

4. A separate ledger must be maintained for nominal funds of the lawyer held in each trust account reflecting bank charges and fees.

5. A monthly trial balance of the ledgers identifying each client matter, the balance of funds held in connection with each client matter at the end of each month, and the total of all the client and third person

balances. No balance for a client matter or with respect to funds maintained for a third person may be negative at any time.

6. A monthly reconciliation of the checkbook balance, the ledger trial balance total, and the adjusted bank statement balance. The adjusted bank statement balance is determined from the month-end bank statement balance by adding outstanding deposits and subtracting outstanding checks.

7. Bank statements, canceled checks or copies of canceled checks if they are provided with the bank statements, and duplicate deposit slips. Cash fee payments must be documented by copies of receipts countersigned by the payor. All disbursements must be by check unless made by wire transfer. If a withdrawal is made by wire transfer, a lawyer must create a written memorandum authorizing the transaction, signed by the lawyer responsible for the transaction. The wire transfer must be entered in the check register and include all the identifying information listed in subsection (b) (2) (b) of this Rule.

8. A lawyer who maintains trust account records by computer must print, contemporaneously with making the computer entry, hard copies and retain, on a monthly basis, the checkbook register, the trial balance of the ledgers and the reconciliation report. The checkbook register

must contain all the information identified in section (b)(2) of this Rule.

9. A record of all property, specifically identified, other than funds held in trust for clients or third persons.

10. Records documenting timely notice to clients and third persons of all receipts and disbursements of their funds to and from each trust account.

COMMENT

New Rule 1.15(b) sets forth minimum record-keeping requirements. The records required to be kept permit the lawyer, clients and third persons to be assured that funds and property are being maintained by the lawyer consistent with the care required of a professional fiduciary. Electronic records should be regularly backed up by an appropriate storage device. The frequency of the backup procedure should be directly related to the volume of activity in the trust account.

(b) (c) 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 the purpose.

(c) (d) Unless the client gives informed consent, confirmed in writing, to a

different arrangement, 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.

(d) (e) 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 stated in this Rule 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.

(e) (f) 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 property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.