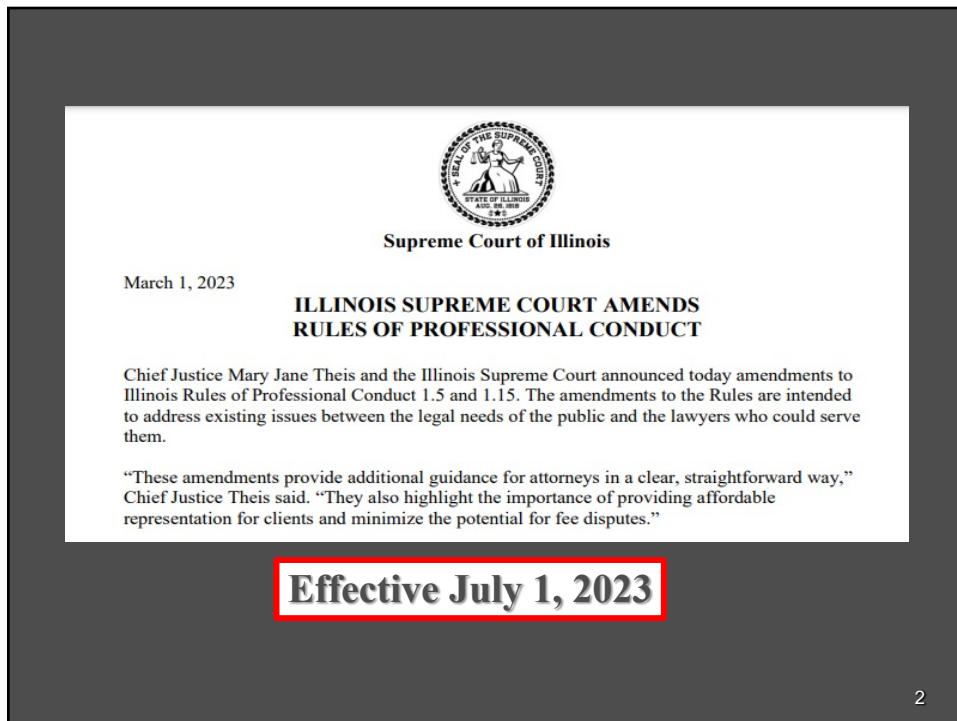


The slide features a background image of a stack of US dollar bills. At the top, the text "ISBA Mutual" is displayed in a serif font. Below that, the main title "Fees and Client Trust Accounts: What You Need to Know About Amended Rules 1.5 and 1.15" is centered. The presenter's name, "Mary F. Andreoni", and her title, "ARDC Ethics Education Counsel", are listed below the title. The date "January 25, 2024" is at the bottom right. The ARDC logo, which includes the text "ARDC ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION", is in the bottom left corner. A small number "1" is in the bottom right corner of the slide.

1



The slide contains a white rectangular area with a dark border. At the top center is the seal of the Supreme Court of Illinois. Below the seal is the text "Supreme Court of Illinois". To the left, the date "March 1, 2023" is listed. The main heading is "ILLINOIS SUPREME COURT AMENDS RULES OF PROFESSIONAL CONDUCT". The body text states: "Chief Justice Mary Jane Theis and the Illinois Supreme Court announced today amendments to Illinois Rules of Professional Conduct 1.5 and 1.15. The amendments to the Rules are intended to address existing issues between the legal needs of the public and the lawyers who could serve them." A quote follows: "These amendments provide additional guidance for attorneys in a clear, straightforward way," Chief Justice Theis said. "They also highlight the importance of providing affordable representation for clients and minimize the potential for fee disputes." At the bottom, the text "Effective July 1, 2023" is enclosed in a red rectangular box. A small number "2" is in the bottom right corner of the slide.

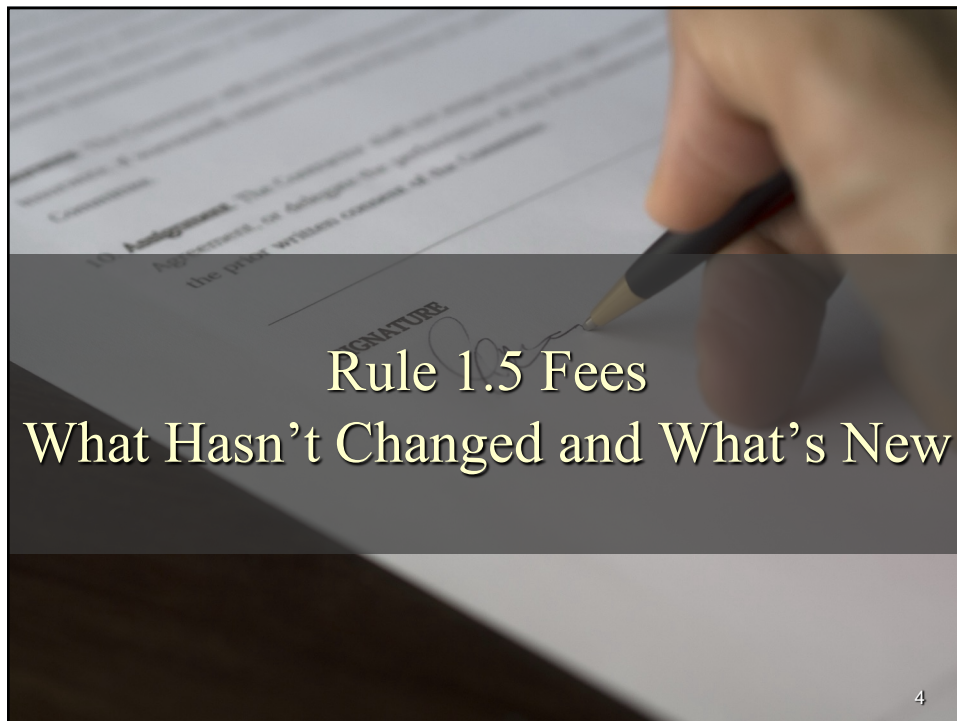
2

Amendments to Rule 1.5 (Fees) and Rule 1.15 (Safekeeping Property)

- Why?
 - clearer, plainer language, e.g. “shall” is replaced with “must”.
 - Update to keep up with advances in technology, e.g. maintenance of electronic records and definition of “funds” includes electronic fund transfers.

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What Hasn't Changed in Rule 1.5

- Factors determining reasonableness of fees;
- Communication with clients about fees; and,
- Referral fees between lawyers in different firms.

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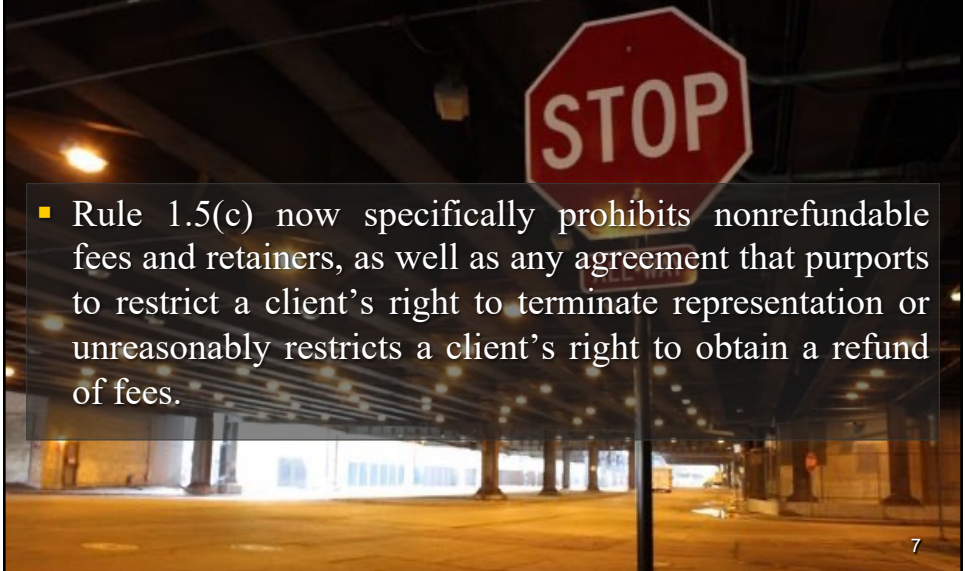
What's New Amended Rule 1.5 Fees

- Nonrefundable fees and retainers.
- Codifies five “common” fee agreements in Rule 1.5, previously in the Comments to Rule 1.15.

6

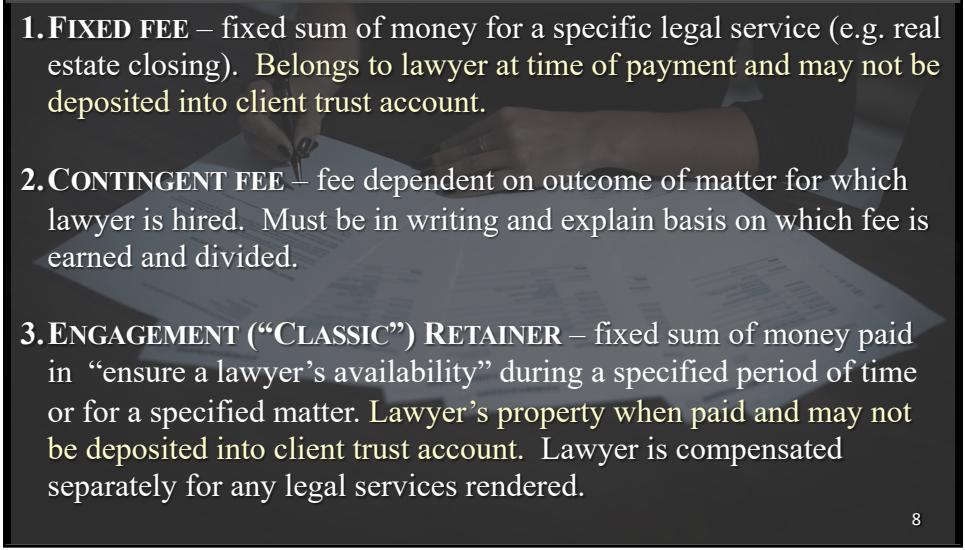
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Nonrefundable Fees and Retainers: Rule 1.5(c)

- 
- Rule 1.5(c) now specifically prohibits nonrefundable fees and retainers, as well as any agreement that purports to restrict a client's right to terminate representation or unreasonably restricts a client's right to obtain a refund of fees.

7

“Common” Fee Agreements and Where to Deposit Retainers: Rule 1.5(d)(1)-(5)

- 
1. **FIXED FEE** – fixed sum of money for a specific legal service (e.g. real estate closing). Belongs to lawyer at time of payment and may not be deposited into client trust account.
 2. **CONTINGENT FEE** – fee dependent on outcome of matter for which lawyer is hired. Must be in writing and explain basis on which fee is earned and divided.
 3. **ENGAGEMENT (“CLASSIC”) RETAINER** – fixed sum of money paid in “ensure a lawyer’s availability” during a specified period of time or for a specified matter. Lawyer’s property when paid and may not be deposited into client trust account. Lawyer is compensated separately for any legal services rendered.

8

4. SECURITY RETAINER – funds paid to the lawyer to secure payment of fees and expenses for future services and costs the lawyer is expected to perform or incur. Remains property of client and must be placed in client trust account until funds are applied to services rendered.

5. SPECIAL PURPOSE RETAINER (A/K/A “advance payment retainer” described in *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007) – funds paid to the lawyer as present payment for the commitment to provide legal services in the future. Used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. Lawyer’s property when paid and may not be deposited into client trust account. Must be in writing and comply with the requirements spelled out in Rule 1.5(d)(5).

** Descriptions of the common fee retainers were previously located in the Comments to Rule 1.15.*

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“Uncommon” Fee Agreements

- A new Comment [now Comment 8A] was added to Rule 1.5 on December 22, 2022 (eff., Jan. 1, 2023), to clarify that Rule 1.5 allows fee agreements that are not on an hourly rate, e.g., fixed fee arrangements, and stresses that where appropriate, lawyers should consider alternative arrangements to deliver affordable representation and minimize the potential for fee disputes.

10

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Practice Pointers

- All fee agreements must be:
 - 1) reasonable (R. 1.5(a) and
 - 2) refundable (R. 1.5(c).
- The purpose of the fee dictates its character and treatment irrespective of labels or terminology used.
- All fee agreements should be in writing.
- Fee agreements that must be in writing under RPC:
 - Contingency fee
 - Special purpose/Advance payment retainer (Dowling)
 - Referral/co-counsel fee arrangements
 - Also required by law (e.g. IL Marriage Act)

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Safekeeping Funds and Property: New Rule 1.15 in Four Parts



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New Rule 1.15: “General Duties Regarding Safekeeping Property”



Retains the admonishment that property or funds held by a lawyer in connection with a representation must be kept separate from the lawyer’s own property and adds language to underscore the directive that a lawyer cannot use trust funds or property without authorization.

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What Hasn’t Changed

- Safekeeping property and funds;
- When it is permissible for lawyers to place their own funds in a trust account;
- Lawyers’ duties to notify and pay out funds received by lawyers on behalf of others; and
- Lawyers’ duties in event of dispute over held funds.

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What's New

- **“Conversion”** now in Rule 1.15(a) : “A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer’s own purposes without authorization.”
- **No cash withdrawals, no checks to “cash,” no ATM withdrawals** from a client trust account. Rule 1.15(g) requires withdrawals from client trust accounts only by check to a named payee or by electronic transfer. No cash withdrawals.

15

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Electronic Forms of Payment: New Comments [5]-[6] to Rule 1.15

Comment [5] “Lawyers using an electronic payment method, including credit cards, ACH transfers (Automated Clearing House electronic funds transfers), and online payment systems, to accept the payment of client or third-person funds **must take reasonable steps** to ensure that the use of such a method does not result in any commingling with the funds of the lawyer, does not risk the loss of any client or third- person funds, and does not compromise the identity of any client or third-person funds....[and] ensure that client or third-person funds accepted through an electronic payment method are transferred immediately to an IOLTA account or non-IOLTA client trust account maintained by the lawyer.”

Comment [6] “In addition to the steps described in Comment [5], lawyers have an obligation to make a **reasonable investigation** into the reliability, stability, and viability of an electronic payment method or system to determine whether the method or system takes appropriate measures to segregate, safeguard, and ensure the prompt transfer of client funds...” See Rule 1.1 (duty to understand the benefits and risks of relevant technology) and Rule 1.6 (duty to maintain confidentiality).

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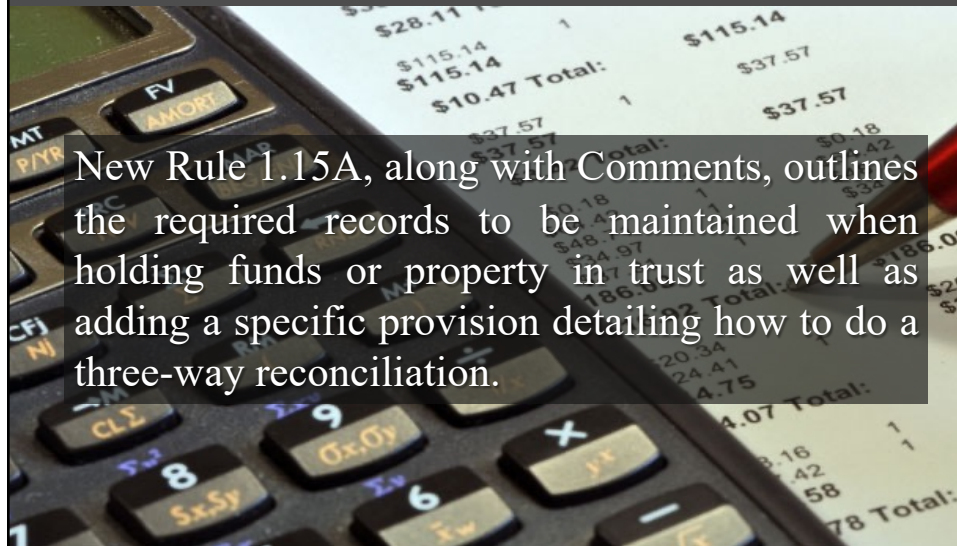
Ethical Considerations in Taking Electronic Forms of Payment

- Deposit in trust account v. business account?
- Fees - can you pass fees to clients?
- Payments may be subject to chargeback
- Confidentiality
- Accountability/Record Keeping/Audit Trail
- Resources: ISBA Opinion No. 14-01 (May 2014) (credit cards) and *Guide to E-filing and IOLTA Accounts* (Lawyers Trust Fund of IL – www.ltf.org)

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New Rule 1.15A “Required Records”



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What Hasn't Changed

- Maintains the five required client trust account recordkeeping journals in Rule 1.15A(b)(1)-(8):
 - ✓ Checkbook Register
 - ✓ Receipts Journal
 - ✓ Disbursements Journal
 - ✓ Client Ledger Pages
 - ✓ Reconciliation Report

Samples of the above recordkeeping journals can be found on the ARDC website
(www.ardc.org)

- Maintains requirement that all accounting records must be maintained and accessible for seven years after the representation has ended.

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New

Three-Way Reconciliations: Rules 1.15A(b)(7) and (c)

- Rule 1.15A(b)(7) requires lawyers to prepare and maintain three-way reconciliation reports on at least a **quarterly** basis.
- NEW Rule 1.15A(c) explains how to perform a three-way reconciliation.
- **Caution** – Reconciliations done quarterly could result in waiver of bank errors. There's a limited time to dispute errors with the bank. See Comment [2].
- **Practice Pointer** – Reconciliations should be done as soon as or at least within 30 days of the date of issuance of the bank statement.

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How to Do a Reconciliation

$2 + 2 \neq 5 = 4$

BANK STATEMENT
=
CHECKBOOK REGISTER
=
RECEIPTS JOURNAL – THE DISBURSEMENT JOURNAL
=
SUM OF ALL CLIENT LEDGERS

MUST EQUAL ONE ANOTHER

21

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The new home for all the requirements for trust accounts including IOLTA accounts, disbursing real estate transaction funds and overdraft notifications. It also includes instructions on handling unidentified funds.

New Rule 1.15B “Trust Accounts and Overdraft Notification”

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What Hasn't Changed

- Handling unidentified funds in IOLTA accounts;
- Overdraft notification program; and
- Lawyers' disbursement of real estate transaction funds using Real Estate Funds Accounts.

23

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Maintains Requirement that Every Client Trust Account Must Be:

- interest-bearing or dividend-bearing;
- held at an “eligible financial institution;” and
- opened with interest accruing for the benefit of either:
 - the client (Non-IOLTA account) or
 - the IOLTA program (in Illinois, the Lawyers Trust Fund) (IOLTA)
- Non-interest bearing trust accounts are still prohibited – Rule 1.15B(a)

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What's New IOLTA v. Non-IOLTA trust account: New Rules 1.15B(a) & (b)



Rule 1.15B(a) requires all funds belonging to a client or third person be deposited into an IOLTA account unless the funds can otherwise earn net income for the client or third person. Net income means interest that exceeds the costs incurred to secure such interest.

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- Discretion retained in new Rule 1.15B(b) but adds a new requirement of review after the deposit:

The lawyer must review the lawyer's IOLTA account(s) at reasonable intervals to determine whether changed circumstances require further action regarding the deposited client or third-person funds.

A lawyer who exercises reasonable judgment in determining whether to deposit client or third-person funds into an IOLTA account or a non-IOLTA client trust account pursuant to this rule will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination.

- **Practice Pointer** – Take this into consideration when doing regular status reviews of client matters.

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New Rule 1.15C “Definitions for Rule 1.15, 1.15A and 1.15B”

Keeps definitions for various terms employed in Rules 1.15, 1.15A, and 1.15B, formerly contained in prior Rule 1.15(j).

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ARDC Resources



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ARDC website under “Publications”

- List of Eligible Financial Institutions
- *Client Trust Account Handbook*
- Sample Recordkeeping Account Journals



Questions about IOLTA & Enrollment Forms

- Lawyers Trust Fund (IOLTA) www.ltf.org

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ARDC Ethics Inquiry Hotline

312-565-2600 (Chicago)
217-546-3523 (Springfield)

IL Rules of Professional Conduct & Disciplinary Law

ARDC website at: www.iardc.org

FREE online CLE seminars at ARDC web site

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Questions



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