

Minutes of the Meeting
Rules Committee
Monday, March 16, 2015

On Monday, March 16, 2015, the Rules Committee met in the Supreme Court courtroom from 2:00 p.m. to 4:12 p.m.

Members in attendance were:

HON. DENNIS G. EVELEIGH, CHAIR
HON. JON M. ALANDER
HON. WILLIAM H. BRIGHT, JR.
HON. HENRY S. COHN
HON. ROBERT L. GENUARIO
HON. MARY E. SOMMER
HON. ROBIN L. WILSON
HON. ROBERT E. YOUNG

Also in attendance were Joseph J. Del Ciampo, Counsel to the Rules Committee, and Attorneys Denise K. Poncini and Lori A. Petruzzelli of the Judicial Branch's Legal Services Unit. The Honorable Marshall K. Berger, Jr. was not in attendance at this meeting.

1. The Committee approved the minutes of the meeting held on February 10, 2015 with a minor revision. Judge Bright abstained from this vote.

2. The Committee considered a redraft of the Proposal by the Connecticut Bar Association's Standing Committee on Professional Ethics Regarding changes to the Rules of Professional Conduct, the original proposal, and comments on the proposal by the Statewide Grievance Committee. Judge Wilson arrived during the discussion of this item. Attorney Marcy Stovall was present and addressed the Committee concerning this matter.

After discussion, the Committee unanimously voted to submit to public hearing the proposed amendment to Rule 1.15(f) of the Rules of Professional

Conduct, as revised by the Committee, as set forth in Appendix A attached to these minutes. The Committee referred the proposed amendment to the Official Commentary to the Rules of Professional Conduct and the proposed amendments to Rules 3.4, 3.8, 4.1, 5.3, 5.6, 6.2, 6.3, 8.1 and 8.4 of the Rules of Professional Conduct to the Office of the Reporter of Judicial Decisions for consideration by that office.

3. The Committee considered a second redraft of a proposal by Attorney Fred Ury and Attorney Lou Pepe to implement Minimum Continuing Legal Education (MCLE); correspondence to members of the MCLE Task Force requesting comments on proposed redraft of original proposal; and a correction to the redraft of original proposal and comments on the proposal by the Statewide Grievance Committee, the Connecticut Bar Association, the Connecticut Trial Lawyers Association, the Waterbury Bar Association and the New Haven County Bar Association. Attorneys Fred Ury, Lou Pepe, Lawrence Maurizio, Howard Levin, Tom Gugliotti and Chris Nelson were present and addressed the Committee concerning this proposal as did Michael Nowacki.

After discussion, the Committee voted to table the matter until its first meeting in the fall to permit the Waterbury and New Haven County Bar Associations the opportunity to review the proposal with their membership and to submit comments to the Committee. Judges Genaurio and Wilson opposed the vote; Justice Eveleigh did not participate in the vote.

6. The Committee considered a proposal by Hon. Patrick L. Carroll III, Chief Court Administrator, to amend Section 25-59A to place under seal in the court's file the *Income Withholding for Support*, form JD-FM-1. Joseph D'Alesio, Executive Director, Superior Court Operations, and Damon Goldstein, Caseflow Management Specialist were present and addressed the Committee concerning the proposal.

After discussion, the Committee unanimously voted to submit to public hearing the proposed revision to Section 25-59A, as amended by the Committee, as set forth in Appendix B attached to these minutes.

7. The Committee considered a proposal by Mr. Michael Nowacki regarding procedures for a self-represented individual to obtain a subpoena for a witness in a criminal proceeding; and *State v. Nowacki* (AC 34577). Mr. Nowacki was present and addressed the Committee concerning the proposal.

After discussion, the Committee unanimously voted to submit to public hearing a revision to Section 7-19 as set forth in Appendix C attached to these minutes and to refer the proposal and the revision to Judge Devlin for comment at the Public Hearing on May 18, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph J. Del Ciampo". The signature is written in a cursive style with a large initial "J".

Joseph J. Del Ciampo
Counsel to the Rules Committee

Appendix A (031615)

Rule 1.15. Safekeeping Property

(a) As used in this Rule, the terms below shall have the following meanings:

(1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.

(2) An "eligible institution" means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or (ii) an openend investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection [(h)](i) (3) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection [(h)](i) (4) below, subject to the dispute resolution process provided in subsection [(h)](i) (4) (E) below.

(3) "Federal Funds Target Rate" means the target level for the federal funds rate set by the Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term "Federal Funds Target Rate" means the upper limit of such range.

(4) "Interest- or dividend-bearing account" means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the

Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least \$250,000,000.

(5) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection [(h)](i) (6) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection [(h)](i) (4) below.

(6) "Non-IOLTA account" means an interest or dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) "U.S. Government Securities" means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

(b) 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 in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes.

(d) Absent a written agreement with the client otherwise, 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.

(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 or third person, 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.

(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 have interests, the property shall be kept separate by the lawyer until [the dispute is] any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which the [interests are not in dispute] lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.

(g) The word "interest(s)" as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within 60 days, the lawyer may distribute the funds in question to the client.

[g](h) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds

cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors: (1) The amount of the funds to be deposited; (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held; (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited; (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions; (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments; (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

[(h)](i) An IOLTA account may only be established at an eligible institution that meets the following requirements:

(1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.

(2) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.

(3) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA

account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants; (iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the

procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice;

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.

(5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection [(h)](i) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after

publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection [(h)](i) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

[(i)](j) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and (10) copies of those portions of client files that are reasonably related to client trust account transactions.

[(j)](k) With respect to client trust accounts required by this Rule:

(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;

(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals shall be made only by check payable to a named payee or by authorized electronic transfer and not to cash.

[(k)](l) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced.

These records shall be readily accessible to the lawyer.

[(l)](m) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

[(m)](n) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

COMMENTARY: 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. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices.

While normally it is impermissible to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. 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 a trust account 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.

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

The word "interest(s)" as used in subsections (e), (f) and (g) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

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 only 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 and is not governed by this Rule. A "lawyers' fund" for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money

or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

Subsection [(h)](i) requires lawyers and law firms to participate in the statutory IOLTA program. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

Subsection [(i)](j) lists the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Rules of Professional Conduct.

Subsection [(i)](j) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks for a period of at least seven years after termination of each particular legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. § 5001 et seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002 (16) as paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. § 5002 (2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be printed and maintained for the requisite number years.

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a

deposit account. ACH payments are used in a variety of payment environments including bill payments, business to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection [(i)](j)(8).

There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection [(i)](j)(8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase, and the paper check is returned to the issuer. Second, in a "backoffice conversion," a paper check is presented at the pointof-purchase and is later converted into a debit, and the paper check is destroyed. Third, in a "account-receivable conversion," a paper check is converted into a debit, and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone, and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Subsection [(i)](j)(8) applies to each of the types of electronic funds transfers described. All electronic funds transfers shall be recorded, and a lawyer should not reuse a check number which has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection [(i)](j) (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of

identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in subdivisions (1) through (9) of subsection [(h)](i) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under subdivision (10) of subsection [(h)](i) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this subdivision include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

Subsection [(j)](k) lists minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in this jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorized to make electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a nondelegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See Rules 5.1 and 5.3 of the Rules of Professional Conduct.

Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

The requirements in subdivision (2) of subsection [(j)](k) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit.

Subsection [(k)](l) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) backup procedures is essential. If a lawyer uses thirdparty electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See, ABA Formal Ethics Opinion 398 (1995). Records required by subsection [(i)](j) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.15 of the Rules of Professional Conduct, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personal identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule.

Subsections [(l)](m) and [(m)](n) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules 1.0 (d), (h), and (i) of the Rules of Professional Conduct.

Amendment Note: The changes to this rule and its commentary address issues related to unwarranted obstruction of disbursements and unsubstantiated claims. Under subsection (f) as revised, a lawyer would be obligated to hold property only where two or more persons have competing interests in the property and would not be prevented from making a proper disbursement because there is a mere claim or dispute lacking a mature legal interest in the property. The term "interest(s)" is defined in new subsection (g) of the rule as is a process by which the lawyer may request information to assist the lawyer in determining whether substantial grounds exist for the claim to the property.

Appendix B (031615)

Sec. 25-59A. Sealing Files or Limiting Disclosure of Documents in Family Matters

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or filed in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f) (1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction or sealing a portion of the file. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

(h) Sworn statements of current income, expenses, assets and liabilities filed with the court pursuant to Sections 25-30 and 25a-15 shall be under seal and be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any guardians ad litem and attorneys appointed for any minor children involved in the matter, except as otherwise ordered by the

judicial authority. When such sworn statements are filed, the clerk shall place them in a sealed envelope clearly identified with the words "Financial Affidavit." All such sworn statements that are filed in a case may be placed in the same sealed envelope. Any person may file a motion to unseal these documents. When such motion is filed, the provisions of paragraphs (a) through (e) of this section shall apply and the party who filed the documents shall have the burden of proving that they should remain sealed. The judicial authority shall order that the automatic sealing pursuant to this paragraph shall terminate with respect to all such sworn statements then on file with the court when any hearing is held at which financial issues are in dispute. This shall not preclude a party from filing a motion to seal or limit disclosure of such sworn statements pursuant to this section.

(i) Any Incoming Withholding for Support form (JD-FM-1) filed with the Superior Court Clerk's Office, after being signed by the clerk, shall be returned to the filer for service on the payer of income. A copy of the signed form shall be retained for the court file and shall be under seal. Any such copy shall be disclosable only to the judicial authority, to court personnel, to the parties to the action and their attorneys, and to any individual or entity under cooperative agreement with the IV-D agency requesting disclosure of such form in the administration of the child support program. Any person may file a motion to unseal this document. A copy of the signed form with all social security numbers and dates of birth redacted by the clerk shall be retained in the court file and be available for public inspection.

[(i)](j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the Judicial Branch website. A notice of such motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

COMMENTARY: The Income Withholding for Support form (JD-FM-1) is a federally mandated form. The social security number and dates of birth are required fields, and there is currently no law that protects this information from disclosure. Family files are now electronic and may be viewed from any courthouse public access computer in the state, allowing for greater access to these documents without the need to go to a clerk's office. Therefore, the most secure way of protecting the social security number and other personal identifying information on this form is to seal the copy of the form that is retained in the court file. A provision has been included to allow any person to move to unseal the document. A redacted copy of the signed form will be retained in the court file for public inspection.

Appendix C (031615)

Sec. 7-19. Issuing Subpoenas for Witnesses on Behalf of Self-Represented Litigants

Self-represented litigants seeking to compel the attendance of necessary witnesses in connection with the hearing of any [civil] matter, including matters scheduled on short calendar or special proceeding lists or for trial, shall file an application to have the clerk of the court issue subpoenas for that purpose. The clerk, after verifying the scheduling of the short calendar hearing, special proceeding or trial, shall present the application to the judge before whom the matter is scheduled for hearing, or the administrative judge or any judge designated by the administrative judge if the matter has not been scheduled before a specific judge, which judge shall conduct an ex parte review of the application and may direct or deny the issuance of subpoenas as such judge deems warranted under the circumstances, keeping in mind the nature of the scheduled hearing and future opportunities for examination of witnesses, as may be appropriate.

COMMENTARY: The change to this section expands the applicability of the section to any matter and comports with State v. Nowacki, 155 Conn. App. 758 (2015).