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Subject: FW: Respondents' Counsel Roundtable Comments on Proposed Change to RPC 1.15A
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Sent: Friday, April 28, 2023 4:04 PM
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Subject: Respondents' Counsel Roundtable Comments on Proposed Change to RPC 1.15A

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Dear Honorable Members of the Washington State Supreme Court:

We are a group of lawyers who represent respondents in lawyer discipline cases. We support the concept of the change proposed by the Legal Foundation of Washington. In our experience, it is extremely rare, if ever, that funds sent to the unclaimed property fund as unidentified are ever later identified and withdrawn. We therefore believe it would be better to have those funds support the Legal Foundation of Washington.

We have two suggested changes to the proposed rule. First, the proposal requires that a lawyer take “periodic and reasonably diligent steps to identify the person entitled to receive the funds” Identifying the ownership of funds in a trust account requires review of available records. Funds remain unidentified after taking diligent steps to identify ownership only if adequate records do not exist. For example, this could happen because the unidentified funds have been in the trust account longer than the earliest records available from the bank. Or it could happen when a cash deposit is made and the lawyer does not adequately record ownership of those funds. Regardless of the cause, once the lawyer has obtained all available records and made a diligent attempt to identify ownership, there is nothing more that can be done. We therefore do not believe it is appropriate to require “periodic” steps to identify ownership, as “periodic” steps would only consist of reviewing the same records and again coming up empty-handed.

Second, the proposed change provides “A lawyer’s reasonable judgment, made in good faith, about whether to remit the funds to the Legal Foundation of Washington, does not constitute a violation of

this paragraph, even if subsequently determined to have been erroneous.” There is a lot of confusion among practitioners about the trust account requirements. We agree with LFW that a lawyer should not be disciplined for remitting funds to LFW reasonably and in good faith. We believe that similarly, if a lawyer reasonably and in good faith submits funds to the Unclaimed Property Division of the Department of Revenue when those funds should have been submitted to LFW under the proposed rule change, the lawyer also should not be subject to discipline.

Sincerely,

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