



April 26, 2023

The Honorable Chief Justice Steven C. González  
Washington State Supreme Court  
PO Box 40929  
Olympia, WA 98504-0929

Re: Proposed Amendments to RPC 1.15A and ELC 15.7

Dear Chief Justice:

The Washington State Association for Justice (“WSAJ”) has 2,400 attorney members who represent thousands of citizens in civil matters and workers’ compensation matters. WSAJ respectfully submits the following to the Washington Supreme Court regarding the proposed amendments to RPC 1.15A and ELC 15.7.

We appreciate the need to support the Legal Foundation of Washington (LFW), but we oppose these amendments. These amendments create added difficulties in managing IOLTA accounts, especially for high-volume IOLTA accounts.

Under the current RPCs, attorneys are prohibited from commingling funds of clients and themselves in their IOLTA accounts. RPC 1.15A(c). If a lawyer discovers funds in their IOLTA account for which they do not know to whom it belongs, that is a potential violation of the RPC. RPC 1.15A(c)(3).

Additionally, attorneys are currently required to audit their own trust accounts either monthly or quarterly. They are to document the audit and correction of any imbalances. With proper auditing, the unknown balances should be small.

But, with high-volume IOLTA accounts, such as for workers’ compensation attorneys, the risk of these imbalances is greater. The Washington State Bar Association’s (WSBA) Managing Client’s Accounts Booklet, page 27, states what to do if there are extra funds in the trust account for which you cannot identify the owner. <https://tinyurl.com/3yjvw9y6>. If there is a surplus, then we are to turn it over to unclaimed property. The booklet does not specify what to do if there is a deficit, and the attorney is unable to identify, after reasonable efforts, the precise source of the deficit.

WSBA has previously given advice to individual attorneys on what to do to correct this imbalance, which may be more likely in high volume IOLTA accounts. WSBA has individually advised that the attorneys deposit sufficient funds into the IOLTA account to balance the deficit. Those funds are not designated to any specific client (unidentified property) but are present to ensure that if the account is liquidated there are sufficient funds to refund all clients.



In other words, the attorney knows those funds belong to one of their clients. However, they are unable to identify, at that time, specifically which client those funds belong to. In that sense, the owner of that property is not unidentified per se.

However, if the attorney is then required to submit those “unidentified” funds to LFW, that will put their account out of balance, requiring additional funds injected into the IOLTA. The cycle then repeats itself.

If these rules are adopted, then the Court, WSBA, or both must give practitioners additional guidance on how these rules interact with their advice on managing IOLTA accounts. Specifically, what to do if withdrawing the unidentified funds causes the IOLTA account to go out of balance. Regardless, attorneys may be faced with a Sisyphean task of balancing their trust accounts, engaging in due diligence to find the accounting error, and then going out of balance to comply with this new rule.

The WSAJ respectfully requests the Supreme Court reject these amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan P. Roberts".

Nathan P. Roberts  
WSAJ President

A handwritten signature in black ink, appearing to read "Christopher E. Love".

Christopher E. Love  
Chair, WSAJ Court Rules Committee

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
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**From:** Leah Griffin <Leah@washingtonjustice.org>  
**Sent:** Thursday, April 27, 2023 11:51 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** nroberts@connelly-law.com; Chris Love <chris@pcvalaw.com>; Sara Crumb <sara@washingtonjustice.org>; Kelli Carson <kelli@washingtonjustice.org>  
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Dear Chief Justice,

The Washington State Association for Justice respectfully submits the attached letter concerning the proposed amendments to RPC 1.15A and ELC 15.7. We appreciate your consideration.

**Leah Griffin**

*Government Affairs and Political Action Associate*

Washington State Association for Justice

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