



April 13, 2023

**BY EMAIL**

The Standing Advisory Committee on the Rules of Professional Conduct  
c/o Chip Phinney, Deputy Legal Counsel  
Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

Dear Attorney Phinney,

On behalf of the Massachusetts Bankers Association (“Association”), we submit comments and support of the IOLTA Committee’s submitted proposals on the Supreme Judicial Court’s Standing Advisory Committee on the Rules of Professional Conduct’s (“Standing Advisory Committee”) most recent proposed amendments to Rule 1.15 of the Massachusetts Rules of Professional Conduct.

The Association recognizes the tremendous amount of time and consideration that has gone into developing appropriate mechanisms to implement the Court’s directive in *Matter of Olchowski*, 485 Mass. 807 (2020), and we appreciate that issues raised in the Association’s past comments on the previous proposed amendments are addressed in the new proposed amendments. We respectfully request that the Standing Advisory Committee consider the following revisions to the current proposed amendments to ensure an efficient and effective process for handling unidentified and unclaimed funds in IOLTA accounts.

**A. Attorneys Fail to Respond to Notice of Inactivity**

The proposed amendments require our member banks to notify attorneys and the Office of Bar Counsel (“Bar Counsel”) after three years of inactivity in the attorney’s IOLTA account, and then for the attorney to either close the account or notify the bank that the account should remain open. The proposed amendments, however, do not address what happens when the attorney neither closes the account nor communicates with the bank. It is our understanding that the most common cause for IOLTA accounts being escheated as abandoned property for no response from an attorney is that the attorney has not notified the bank of a change in address. The lack of response leaves the bank with a new, possibly endless, unfair obligation to maintain the inactive IOLTA account. It also prevents abandoned IOLTA funds from being available to the IOLTA Committee to use for its charitable purposes as is now its practice.

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To address this situation, the Association concurs with the IOLTA Committee's proposal to add a provision to Rule 1.15 that instructs banks to remit funds in an inactive IOLTA account to the IOLTA Committee one year after sending a notice of inactivity if the bank has received no instruction regarding the account from the attorney or Bar Counsel.

### **B. Initial IOLTA Account Inactivity Notification**

Under the Unclaimed Property Law, which applies to non-IOLTA bank accounts, banks are required to send notice to the account holder at least 60 days prior to escheating inactive accounts to the Commonwealth and to inform the account holder of the process necessary to rebut the presumption of abandonment. *See* M.G.L.c. 200A, Section 7A. In practice, many banks send notice to the account holder five to six months before escheating inactive accounts.

The current proposed amendments to Rule 1.15 do not include a similar initial notice of inactivity to IOLTA account holders. The absence of an initial notice will likely result in Bar Counsel receiving inactivity notices and attorneys being required to respond to those inactivity notices for many IOLTA accounts that are still in use. This scenario is most likely to impact solo and small firms that may only have infrequent activity in their IOLTA accounts because of the size and nature of their practices.

Accordingly, the Association additionally concurs with the IOLTA Committee's proposal to include in Rule 1.15 an initial notice of IOLTA account inactivity to be sent by a bank to the attorney and law firm after two-and-a-half years of inactivity, notifying the attorney that if the account remains inactive for another six months, a formal notice of inactivity will be sent to the Office of Bar Counsel. In the alternative, if an initial notice is not required, it is recommended that Rule 1.15 make clear that it is permissible for banks to send such an initial notice as they previously had done for IOLTA accounts and continue to do for non-IOLTA accounts.

In closing, we appreciate your attention to this important matter and hope that the Standing Advisory Committee finds the Association's comments, and concurrence with the IOLTA Committee's proposals and explanations, valuable. We believe that the revisions proposed will create a more workable, practical approach that balances the important public interest in timely making the undistributable funds available to the IOLTA Committee with the need to ensure attorneys understand their ethical obligations in handling IOLTA accounts.

Please do not hesitate to reach out if further discussion is warranted or if the Association can provide any additional information that would be useful to the Standing Advisory Committee.

Respectfully submitted,



Brad S. Papalardo, Esq.  
Senior Vice President  
Chief of Government Affairs & Counsel  
Massachusetts Bankers Association