

M.R. 3140

**IN THE  
SUPREME COURT  
OF  
THE STATE OF ILLINOIS**

Order entered January 25, 2007.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Rules 39 and 87 are amended, and effective June 1, 2007, Rule 1.15 of the Illinois Rules of Professional Conduct is amended, as follows.

**Amended Rule 39**

**Rule 39. Appointment of Associate Judges**

(a) **Terms.** The terms of all associate judges in office on June 30, 1975, shall expire on that date and on every fourth anniversary of that date, regardless of the date on which any judge is appointed. The office of an associate judge shall be vacant upon his or her death, resignation, retirement, or removal, or upon the expiration of his or her term without his or her reappointment. When a sitting associate judge submits in writing his or her resignation, the chief judge of the circuit may, no sooner than 120 days before the effective date of such resignation, cause notice of the vacancy to be given pursuant to subpart (b) of this rule, provided that the candidate appointed to fill the vacancy shall not take office before the effective date of such resignation.

(b) **Filling Vacancies.** Vacancies in the office of associate judge shall be filled in the following manner:

(1) *Notice of Vacancy.* Upon approval of the Director of the Administrative Office of the Illinois Courts, the chief judge of the circuit shall, after forwarding a copy of the notice to the Director, cause notice to be given to the bar of the circuit, in the same manner as notice of matters of general interest to the bar is customarily given in the circuit, that the vacancy exists and will be filled by the

judges of the circuit. The notice of vacancy shall be given as soon as practicable, but no later than 30 days after the accumulation of five consecutive vacancies for which notice has not been given. If the chief judge of the circuit fails to give notice within the time period prescribed by this provision, the Chief Justice of the Supreme Court may direct the Director of the Administrative Office of the Illinois Courts to give notice of the vacancies in the manner prescribed by this rule.

(2) *Applications and Certification.* ~~Any attorney licensed to practice law in this state who seeks appointment to the office of associate judge~~ Any attorney who seeks appointment to the office of associate judge must be a United States citizen, licensed to practice law in this state, and a resident of the unit from which he/she seeks appointment. Applicants shall have 30 days after the notice of vacancy is given within which to file with the Director of the Administrative Office of the Illinois Courts two signed originals of an application on the form prescribed and furnished by the Director. Applications must be received by the Director within the 30-day period. Applications transmitted via facsimile will not be accepted. At the close of the application process, the Director shall certify to the chief judge a list of those applicants who have timely filed and provide a copy of those applications.

(3) *Nomination.* In judicial circuits having a population of more than 500,000, the chief judge of each circuit and at least two but not more than 10 additional circuit judges selected by their fellow circuit judges shall serve as a nominating committee for candidates for appointment to the office of associate judge of their circuit. If there are fewer than 20 circuit judges in a circuit, all of the circuit judges may sit as a nominating committee. When one or more vacancies in the office of associate judge are to be filled, the nominating committee shall select from the applications filed twice as many names of qualified candidates as there are vacancies to be filled.

(4) *Distribution of Ballots and Related Materials.*

(i) In judicial circuits having a population of more than 500,000, the chief judge shall notify the Director of the names of those candidates selected by the nominating committee and request that the Director initiate the balloting process. Within 14 days after the chief judge's notification, the Director shall place the name of each candidate on a ballot in alphabetical order. The ballot shall also contain blank spaces equal in number to the number of vacancies to be filled, in which spaces may be written the name of any qualified applicant whose name does not appear on the ballot as a candidate.

(ii) In judicial circuits having a population of less than 500,000, the chief judge shall request that the Director initiate the balloting process. Within 14 days after the chief judge's request, the Director shall place the name of each candidate on a ballot in alphabetical order.

(iii) A ballot and a brief biographical synopsis of each candidate shall be mailed to each circuit judge in the circuit. Each ballot shall also be accompanied by a stamped, addressed return envelope, an envelope marked "For Ballot Only," and a signature card. Upon request, any circuit judge may obtain a copy of the complete application of any applicant.

(5) *Balloting.* Each circuit judge shall complete his or her ballot by voting for one candidate for each vacancy to be filled, enclose the ballot in the envelope marked "For Ballot Only," seal the envelope, sign the signature card, and enclose that envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days of the date the ballots were distributed. The Director shall count the ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots.

(6) *Results of Balloting; Runoffs.*

(i) In judicial circuits having a population of more than 500,000 the candidates receiving the most votes shall be declared to be appointed to fill the vacancies. Ties shall be decided by reballoting in the manner provided above for the first balloting.

(ii) In judicial circuits having a population of less than 500,000 the candidates receiving votes from a majority of the circuit judges who have voted shall be declared to be appointed to fill the vacancies. If there are not enough candidates receiving majorities to fill all the vacancies, the Director shall list alphabetically on a runoff ballot the remaining candidates, in number equal to twice the number of remaining vacancies, who received the most votes in the first balloting (or twice that number plus any who are tied with the candidate in the list who received the least number of votes). The candidates receiving the most votes in the runoff balloting shall be declared to be appointed to vacancies not filled as a result of the first balloting. Ties shall be decided by reballoting in the manner provided above for the first balloting.

**(c) Reappointment of Associate Judges Upon Expiration of Their Terms.**

(1) *Request for Reappointment.* An associate judge may file a request for reappointment with the chief judge of the circuit at least three months but not

more than six months before the expiration of his or her term. At least 63 days before the expiration of the terms of associate judges, each chief judge shall certify to the Director the names of the associate judges in the circuit who have requested reappointment.

(2) *Distribution of Ballots.* At least 40 days before the expiration of the terms of associate judges, the Director shall prepare and distribute ballots on which each circuit judge shall vote on the question whether each associate judge who has requested reappointment shall be reappointed for another term. Each ballot shall be accompanied by a stamped, addressed return envelope, an envelope marked “For Ballot Only,” and a signature card.

(3) *Balloting.* Each circuit judge shall complete his or her ballot, enclose it in the envelope marked “For Ballot Only,” seal the envelope, sign the signature card, and enclose the sealed envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days after it was distributed. The Director shall count the ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots. If three fifths of the circuit judges voting on the question vote in favor of reappointment of an associate judge, he or she shall be declared reappointed for another term.

**(d) Definition of “Circuit Judge.”** For the purposes of this rule, “circuit judge” shall include a circuit judge elected or appointed to a term of office within a circuit (or a unit defined by law which is smaller than the circuit), including a circuit judge who is assigned to the Supreme or the Appellate Court (whether relieved of judicial duties on the circuit court or not), and a circuit judge temporarily recalled from retirement and assigned to judicial duty as a circuit judge in the circuit from which the circuit judge had been elected, but shall not include a circuit judge who was elected in another circuit but is temporarily assigned to a circuit which is in the process of selecting or retaining an associate judge. A circuit judge appointed to office during the balloting period may vote to fill associate judge vacancies in his or her circuit if the circuit judge has been sworn in and has provided a copy of his or her signed oath of office to the Director. The newly appointed circuit judge must complete and deliver his or her ballot to the Director within the same 14-day period that the ballots were distributed to the circuit judges under paragraph (b)(5). In no instance will the 14-day period specified in paragraph (b)(5) be extended for those circuit judges appointed to office during the balloting period.

Effective July 1, 1971; amended effective October 14, 1971; amended April 1, 1992, effective August 1, 1992; amended December 3, 1997, effective January 1, 1998; amended December 17, 1999, effective immediately; amended March 16, 2001, effective immediately; amended November 27, 2002, effective immediately; amended May 28, 2003, effective immediately; amended January 25, 2007, effective immediately.

## **Amended Rule 87**

### **Rule 87. Appointment, Qualification and Compensation of Arbitrators**

**(a) List of Arbitrators.** A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the practice of law and retired judges within the circuit in which the court is situated.

**(b) Panel.** The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

**(c) Disqualification.** Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

**(d) Oath of Office.** Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators.

Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

**(e) Compensation.** Each arbitrator shall be compensated in the amount of \$75 \$100 per hearing.

Adopted May 20, 1987, effective June 1, 1987; amended December 3, 1997, effective January 1, 1998; amended March 1, 2001, effective immediately; amended January 25, 2007, effective immediately.

## Amended Rule 1.15

### Rule 1.15. Safekeeping Property

(a) 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 or accounts 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.

(b) 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, 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.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

~~(d) All nominal or short-term funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more pooled interest-bearing trust accounts established with a bank or savings and loan association, with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each pooled, interest-bearing trust account shall comply with the following provisions:~~

~~(1) Each lawyer or law firm shall establish one or more interest-bearing trust accounts with any bank(s), savings bank(s) or savings and loan association(s) authorized by federal or state law to do business in Illinois. Each interest-bearing trust account shall be insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and such funds shall be subject to withdrawal promptly upon request. At the direction of the lawyer or law firm, such funds may be used to purchase securities pursuant to fully collateralized overnight repurchase agreements with such financial institution(s);~~

~~provided such securities: (a) are guaranteed as to principal and interest by the full faith and credit of the United States or are AAA-rated United States agency obligations, and (b) are held by a third-party custodian who shall be either the Federal Reserve Bank of Chicago or St. Louis or a correspondent bank who is a member of the Federal Reserve System.~~

~~(2) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to depositors other than lawyers or law firms.~~

~~(3) Each lawyer or law firm shall direct the depository institution to remit net interest or dividends, after deduction of reasonable charges and fees, as the case may be, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, directly to the Lawyers Trust Fund of Illinois. A statement shall be transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent, the account number, the gross interest, the service fee/handling charge, if any, the net interest remitted, the amount of such remittance, the remittance period, and the rate of interest applied.~~

~~(4) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.~~

~~(5) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.~~

(d) All nominal or short-term funds of clients or third persons held by a lawyer or law firm, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more pooled interest- or dividend-bearing trust accounts, hereinafter "IOLTA accounts," established with an eligible financial institution selected by a lawyer or law firm in the exercise of ordinary prudence, and with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each IOLTA account shall comply with the following provisions:

(1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois. An eligible financial institution is a bank or a savings bank insured by the Federal

Deposit Insurance Corporation or an open-end investment company registered with the Security and Exchange Commission, which offers IOLTA accounts within the requirements of this rule as administered by the Lawyers Trust Fund of Illinois.

(2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(3) An IOLTA account that meets the highest comparable rate- or dividend-standard set forth in (d)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product:

(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.

(b) for accounts with balances of \$100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in (f).

(c) for accounts with balances of \$100,000 or more, an open-end money market fund with, or tied to, check-writing capacity solely invested in or fully collateralized by U.S. Government securities.

(4) As an alternative to the account options in (3), the financial institution may pay a “safe harbor” yield equal to 70% of the Federal Funds Target Rate.

(5) A lawyer or law firm may maintain funds belonging to the lawyer or law firm in the IOLTA account to meet minimum balance requirements and to pay bank charges.

(6) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial

institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated, the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.

(7) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.

(8) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.

(e) Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be ~~deposited~~ held and the likelihood of delay in the relevant transaction or proceeding;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

~~(f) Any lawyer or law firm that can establish that compliance with subparagraph (d) of this rule has resulted in any banking expense whatsoever shall be entitled to reimbursement of such expense from the Lawyers Trust Fund of Illinois by filing an appropriate claim with supporting documentation.~~

(f) Definitions

(1) "IOLTA account" means an interest- or dividend-bearing trust account benefiting the Lawyers Trust Fund of Illinois, established in an eligible institution for the deposit of nominal or short-term funds of clients or third

persons as defined in (d) and from which funds may be withdrawn upon request as soon as permitted by law.

(2) “Open-end money market fund” is a fund of an open-end investment company that must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940, and, at the time of the investment, have total assets of at least \$250 million.

(3) “U.S. Government securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest or any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement (“repo”) may be established only with an institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations.

(4) “Safe harbor” is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

(5) “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, automated investment (“sweep”) fees, and a reasonable maintenance fee, if those fees are charged on comparable bank accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

**(g)** In the closing of a real estate transaction, a lawyer’s disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the “good-funds” requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the

following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding \$5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. §202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted February 8, 1990, effective August 1, 1990; amended July 18, 1990, effective August 1, 1990; amended April 1, 1998, effective immediately; amended October 1, 1998, effective immediately; amended December 1, 1998, effective immediately; amended January 25, 2007, effective June 1, 2007.