

Rule 1.15E. Approved Institutions.

## **Colorado Court Rules**

### **Colorado Rules of Professional Conduct**

#### **Client-lawyer Relationship**

*As amended through Rule Change 2018(6), effective April 12, 2018*

#### **Rule 1.15E. Approved Institutions**

- (a) This Rule applies to each trust account that is subject to Rule 1.15B, other than a trust account that is maintained in other than an approved financial institution pursuant to the second sentence of Rule 1.15B(d).
- (b) Each trust account shall be maintained at a financial institution that is approved by the Regulation Counsel, pursuant to the provisions and conditions contained in this Rule. The Regulation Counsel shall maintain a list of approved financial institutions, which it shall renew not less than annually. Offering a trust account or a COLTAF account is voluntary for financial institutions.
- (d) The Regulation Counsel shall approve a financial institution for use for lawyers' trust accounts, including COLTAF accounts, if the financial institution files with the Regulation Counsel an agreement, in a form provided by the Regulation Counsel, with the following provisions and on the following conditions:
  - (1) The financial institution does business in Colorado;
  - (2) The financial institution agrees to report to the Regulation Counsel in the event a properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored. That agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty-days notice in writing to the Regulation Counsel.
  - (3) The financial institution agrees that all reports made by the financial institution shall be in the following format: (i) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (ii) in the case of an instrument that is presented against insufficient funds but that is honored, the report shall identify the financial institution, the lawyer or law firm for whom the account is maintained, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Report of a dishonored instrument shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If no such time is provided by law for notice of dishonor, or if the financial institution has honored an

instrument presented against insufficient funds, then the report shall be made within five banking days of the date of presentation of the instrument.

- (4) The financial institution agrees to cooperate fully with the Regulation Counsel and to produce any trust account records on receipt of a subpoena for the records issued by the Regulation Counsel in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program.
- (5) The financial institution agrees to cooperate with the COLTAF program and shall offer a COLTAF account to any lawyer or law firm who wishes to open one.
- (6) With respect to COLTAF accounts, the financial institution agrees:
  - (A) To remit electronically to COLTAF monthly interest or dividends, net of allowable reasonable COLTAF fees as defined in subparagraph (c)(10) of this Rule, if any; and
  - (B) To transmit electronically with each remittance to COLTAF a statement showing, as to each COLTAF account, the name of the lawyer or law firm on whose account the remittance is sent; the account number; the remittance period; the rate or rates of interest or dividends applied; the account balance or balances on which the interest or dividends are calculated; the amount of interest or dividends paid; the amount and type of fees, if any, deducted; the amount of net earnings remitted; and such other information as is reasonably requested by COLTAF.
- (7) The financial institution agrees to pay on any COLTAF account not less than (i) the highest interest or dividend rate generally available from the financial institution on non- COLTAF accounts when the COLTAF account meets the same eligibility requirements, if any, as the eligibility requirement for non-COLTAF accounts; or (ii) the rate set forth in subparagraph (c)(9) below. In determining the highest interest or dividend rate generally available from the financial institution to its non-COLTAF customers, the financial institution may consider factors customarily considered by the financial institution when setting interest or dividend rates for its non-COLTAF accounts, including account balances, provided that such factors do not discriminate between COLTAF accounts and non-COLTAF accounts. The financial institution may choose to pay on a COLTAF account the highest interest or dividend rate generally available on its comparable non-COLTAF accounts in lieu of actually establishing and maintaining the COLTAF account in the comparable highest interest or dividend rate product.

- (8) A COLTAF account may be established by a lawyer or law firm and a financial institution as:
- (A) A checking account paying preferred interest rates, such as market-based or indexed rates;
  - (B) A public funds interest-bearing checking account, such as an account used for other non-profit organizations or government agencies;
  - (C) An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest; or
  - (D) A business checking account with an automated investment feature in overnight daily financial institution repurchase agreements or money market funds. A daily financial institution repurchase agreement shall be fully collateralized by U.S. Government Securities (meaning U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States government) and may be established only with an approved institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. A "money market fund" is a fund maintained as a money market fund by an investment company registered under the Investment Company Act of 1940, as amended, which fund is qualified to be held out to investors as a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act. A money market fund shall be invested solely in U.S. Government Securities, or repurchase agreements fully collateralized by U.S. Government Securities, and, at the time of the investment, shall have total assets of at least two hundred fifty million dollars (\$250,000,000).
- (9) In lieu of a rate set forth in paragraph (c)(7)(i), the financial institution may elect to pay on all deposits in its COLTAF accounts, a benchmark rate, which COLTAF is authorized to set periodically, but not more frequently than every six months, to reflect an overall comparable rate offered by financial institutions in Colorado net of allowable reasonable COLTAF fees. Election of the benchmark rate is optional, and financial institutions may choose to maintain their eligibility by paying the rate set forth in paragraph (c)(7)(i).
- (10) "Allowable reasonable COLTAF fees" are per-check charges, per-deposit charges, fees in lieu of minimum balances, federal deposit insurance fees, sweep fees, and reasonable COLTAF account administrative fees. The financial institution may deduct allowable reasonable COLTAF fees from interest or dividends earned on a COLTAF account, provided that such fees (other than COLTAF account administrative fees) are calculated and imposed in accordance with the approved

institution's standard practice with respect to comparable non-COLTAF accounts. The financial institution agrees not to deduct allowable reasonable COLTAF fees accrued on one COLTAF account in excess of the earnings accrued on the COLTAF account for any period from the principal of any other COLTAF account or from interest or dividends accrued on any other COLTAF account. Any fee other than allowable reasonable COLTAF fees are the responsibility of, and the financial institution may charge them to, the lawyer or law firm maintaining the COLTAF account.

- (11) Nothing contained in this Rule shall preclude the financial institution from paying a higher interest or dividend rate on a COLTAF account than is otherwise required by the financial institution's agreement with the Regulation Counsel or from electing to waive any or all fees associated with COLTAF accounts.
- (12) Nothing in this Rule shall be construed to require the Regulation Counsel or any lawyer or law firm to make independent determinations about whether a financial institution's COLTAF account meets the comparability requirements set forth in paragraph (c)(7). COLTAF will make such determinations and at least annually will inform Regulation Counsel of the financial institutions that are in compliance with the comparability provisions of this Rule.
- (13) Each approved financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. The agreement entered into by a financial institution with the Regulation Counsel shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

**Cite as RPC 1.15E**

**History.** Rule 1.15 Repealed and Readopted by the Court, En Banc, June 17, 2014, effective immediately.

**Note:**

See comments following Rule 1.15A.